

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

T. CHRISTOPHER BURCH, JCB INVESTMENTS :  
LLC, and C. WONDER LLC, :

Plaintiffs, :

v

: Civil Action  
: No. 7921-CS

TORY BURCH, EDUARDO HOLSCHNEIDER, :  
JOHN S. HAMLIN, GLEN SENK, ERNESTO :  
ZEPEDA, MARIA ASUNCION ARAMBURUZABALA :  
LARREGUI, ISLA CORAL, S.A. DE C.V., :  
and TORY BURCH LLC, :

Defendants. :

- - -

Chancery Courtroom No. 12A  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Thursday, November 1, 2012  
2:06 p.m.

- - -

BEFORE: HON. LEO E. STRINE, JR., Chancellor.

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IN-COURTROOM SCHEDULING CONFERENCE

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CHANCERY COURT REPORTERS  
New Castle County Courthouse  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0524

## 1 APPEARANCES:

2 KEVIN G. ABRAMS, ESQ.  
Abrams & Bayliss LLP

3 -and-

4 ANDREW J. ROSSMAN, ESQ.  
of the New York Bar  
Quinn, Emanuel, Urquhart & Sullivan, LLP  
5 for Plaintiffs

6 WILLIAM M. LAFFERTY, ESQ.  
Morris, Nichols, Arsht & Tunnell LLP

7 -and-

8 MARC WOLINSKY, ESQ.  
STEPHEN R. DiPRIMA, ESQ.  
S. CHRISTOPHER SZCZERBAN, ESQ.  
of the New York Bar  
Wachtell, Lipton, Rosen & Katz LLP

10 -and-

11 ROBERT ISEN, ESQ.  
Chief Legal Officer  
Tory Burch  
12 for Defendants Tory Burch and Tory Burch LLC

13 WILLIAM B. CHANDLER III, ESQ.  
Wilson, Sonsini, Goodrich & Rosati, P.C.

14 -and-

15 MICHAEL S. SOMMER, ESQ.  
of the New York Bar  
Wilson, Sonsini, Goodrich & Rosati, P.C.  
16 for Defendants John S. Hamlin and Glen Senk

17 GREGORY P. WILLIAMS, ESQ.  
Richards, Layton & Finger, P.A.

18 -and-

19 ROBERT H. BARON, ESQ.  
of the New York Bar  
Cravath, Swaine & Moore LLP  
20 for Defendants Eduardo Holschneider and Maria  
Asuncion Aramburuzabala Larregui  
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1 MR. ABRAMS: Your Honor, I appreciate  
2 the time taken by the Court to address the plaintiffs'  
3 motion to expedite. Andrew Rossman from Quinn Emanuel  
4 has joined us from New York and, with Your Honor's  
5 permission, he'll speak on behalf of the plaintiffs.  
6 He has been admitted pro hac vice.

7 THE COURT: You know, why don't we  
8 just talk about whether we have much of a disagreement  
9 left.

10 MR. LAFFERTY: Mr. Wolinsky is going  
11 to speak on behalf of --

12 THE COURT: Yeah. I mean, what's -- I  
13 don't want -- I don't want to spoil the drama of the  
14 trial.

15 Sit down.

16 MR. LAFFERTY: Sure.

17 THE COURT: This is like a scheduling  
18 conference. That's all it is. It's just in a -- you  
19 know, it's a grander room because of the things that  
20 hang on the wall. Otherwise it's like a Hechinger  
21 test kitchen, the different colors that -- none that I  
22 would ever select but were selected for us.

23 I don't -- I didn't see any reason to  
24 burden anyone's Hanukkah, New Year's, Christmas,

1 Kwanzaa, Festivus with this preppy clothing dispute.  
2 I don't know why -- I guess I did this to myself, but  
3 somebody in the room started the other tradition of  
4 giving -- where, for some reason, I get all the preppy  
5 clothier cases, because I've had J. Crew. I've had --  
6 I think because I'm culturally steeped in it since I  
7 was nine years old and learned what was hard for a kid  
8 from Baltimore, duck shoes? What's a duck shoe? You  
9 know, and then you see all these freaks wearing this  
10 really ugly -- I like L. L. Bean, but those duck shoes  
11 are ugly. I mean, there's no way around it.

12           So I think for both sides, it might  
13 come as news, you know, there's really nothing all  
14 that new about bright clothing and all that kind of  
15 stuff. So the novelty of any of this may be something  
16 that I have to discover for myself, although I do  
17 think the juxtaposition of Two Fat Guys and Talbot's  
18 in Greenville is just a beautiful thing.

19           So I guess what I'd like to understand  
20 from the defendants is what's really wrong with the  
21 revised proposal from the plaintiffs, if any, given  
22 that -- and I think the papers have been a little bit  
23 vague because I'm not sure anybody showed me exactly  
24 what the consent right is. But my understanding is

1 that the consent right is a right belonging to Tory  
2 Burch LLC?

3 MR. WOLINSKY: No, no. The -- I --  
4 Your Honor, the -- the dispute right now is about 10  
5 weeks, mid-March versus -- excuse me; end of March  
6 versus the beginning -- the middle of June. That's  
7 the bid-and-ask spread.

8 THE COURT: But -- but what I'm trying  
9 to get at is --

10 MR. WOLINSKY: Yeah.

11 THE COURT: -- there's some --

12 MR. WOLINSKY: No.

13 THE COURT: There's a reason why  
14 Mr. Burch --

15 MR. WOLINSKY: Right.

16 THE COURT: -- can't sell.

17 MR. WOLINSKY: There are two reasons,  
18 in essence. The bidders all came in -- and this is  
19 the -- the reason that counts is this one: There were  
20 three bidders at the end of the process that had  
21 submitted term sheets. They all required amendments  
22 to the LLC agreement. Amendments to the LLC agreement  
23 require the consent of Tory Burch, as the person, and  
24 Isla Coral, the member. Those -- those are their

1 equity interests. They also require board approval.

2           So assuming, which obviously we  
3 completely dispute, that the board was just on a  
4 personal vendetta, had no justification whatsoever,  
5 Isla Coral and Ms. Burch, in their individual  
6 capacities, have the right to say "Look, we just" --  
7 "there's not going to be a deal here." In fact, they  
8 have the right to say "If you want" -- "If you want to  
9 exit, you have to shut down C. Wonder."

10           THE COURT: Right. To the extent --  
11 what I'm getting at now is if Mr. Burch just went out  
12 and found somebody --

13           MR. WOLINSKY: Right.

14           THE COURT: -- who did not demand any  
15 change to the LLC agreement --

16           MR. WOLINSKY: Then they still need  
17 board approval.

18           THE COURT: Okay.

19           MR. WOLINSKY: There's a board consent  
20 right that expires in July -- I think July 2014.  
21 July 2014, then the board can't unreasonably withhold  
22 consent. Prior to July 2014 the board has -- the  
23 directors, in their sole and absolute discretion, have  
24 the right to agree -- to approve or disapprove a sale.

1 So there's board-level approval --

2 MR. LAFFERTY: And member level.

3 MR. WOLINSKY: -- and member-level  
4 approval. Member-level approval at this point is a  
5 block, given the way that the bidders have structured  
6 the --

7 THE COURT: Right. What I'm saying --  
8 I'm not trying to get into the -- look, I believe it's  
9 hotly contested between the parties about why some of  
10 these demands are being made. So today is not the day  
11 to resolve the why. It's just to observe that, you  
12 know, there's a dispute about that.

13 We're now at what I guess -- what I'm  
14 saying is ... I don't really understand, given --  
15 what -- why can't we go to trial in the first week in  
16 April, last week in March?

17 MR. WOLINSKY: We don't -- we just  
18 don't think there's enough time to get done what we  
19 have to do and --

20 THE COURT: Why? Because that really  
21 makes no sense to me. I mean, I'm sorry, but --

22 MR. WOLINSKY: Here's the why. I  
23 mean, I'll give you the why. The why is this is not  
24 just a case about what five directors did and why they

1 voted the way they did and why three -- three bidders  
2 structured their bids the way they did. It's also --  
3 we're going to be asserting counterclaims. And  
4 everyone agrees the counterclaims should be tried with  
5 the -- with the affirmative claims. And they're  
6 essentially mirror images of each other. And we want  
7 to prove -- and we expect to prove -- that Mr. Burch  
8 intentionally copied the company's intellectual  
9 property. And that proof is not going to be  
10 developed -- we can put a shoe next to -- their shoe  
11 next to our shoe. We can put a picture of our store  
12 next to our store, but the ultimate proof under -- one  
13 of the ultimate elements of proof in an unfair  
14 competition claim is intent. And we want to prove  
15 that he intentionally copied our styles and store  
16 design. And that --

17 THE COURT: And, again --

18 MR. WOLINSKY: And that --

19 THE COURT: -- I'm sorry, but this  
20 is -- this is not a case about intercontinental  
21 ballistic missiles.

22 MR. WOLINSKY: The copying --

23 THE COURT: And ...

24 MR. WOLINSKY: Yeah.



1           THE COURT:  What you also have to  
2 explain is how you get to hold him hostage with a  
3 self-imposed setoff and then dictate a schedule.  Now,  
4 you're looking quizzically at me, Mr. Wolinsky, but  
5 you're too bright to look at me quizzically.  You know  
6 exactly what I mean --

7           MR. WOLINSKY:  Yeah.

8           THE COURT:  -- by "self-imposed  
9 setoff," which is you have all the time in your world  
10 to go hammer and tong after Mr. Burch at your leisure.  
11 But you bound up claims you have not proven in a  
12 consent right in a situation where the LLC agreement  
13 allows competition.

14           So the mere fact they're competing and  
15 the mere fact -- again, honestly, there are hundreds  
16 of people in New Castle County who could make a bunch  
17 of clothes if you gave them the catalogs.  I'm not  
18 saying Mr. Burch -- it's going to be interesting,  
19 because there's what Tory Burch was before she met  
20 Christopher Burch, and there's what Christopher Burch  
21 was after Tory Burch became the Tory Burch in The New  
22 York Times, and there's maybe influences that go in a  
23 lot of directions here.  There probably are lots of  
24 catalogs people could see.  There are all kinds of

1 dream images of the world. The WASPs; right? The  
2 Lifschitz world, do we know that one?

3 MR. WOLINSKY: I don't know that one.

4 MR. CHANDLER: Ralph Lauren.

5 THE COURT: Ralph Lauren's original  
6 name.

7 MR. WOLINSKY: Oh, okay. Somebody  
8 whispered it to me.

9 THE COURT: Yeah. That's, you know --  
10 I mean, again somebody in the room knows that there  
11 was -- in Sussex County, Delaware, for years you could  
12 go on the Boardwalk and go to Gershman's. And you  
13 know what Gershman's had on the Boardwalk? Anybody  
14 remember that, Mr. Williams?

15 MR. WILLIAMS: I think they had, like,  
16 slightly irregular alligator shirts.

17 THE COURT: Exactly, Izods and Polos.  
18 They were right from the factory. Frankly, anybody  
19 who was a real WASP would shop at Gershman's because  
20 real WASPs actually don't go and pay full Polo price;  
21 right, Mr. Abrams? They don't pay full Polo price at  
22 Macy's. No way. They actually will find a bargain.  
23 That's how they got to be, you know, WASPs. But you  
24 went to Gershman's. And there were little -- there

1 was Lilly Pulitzer, there was Talbot's.

2 I'm just saying I don't really get  
3 that. And I know that you want -- you've been proving  
4 up this case against Mr. Burch for awhile now. How do  
5 I know that? Just so -- no, I'm not going to recuse,  
6 but I'm actually -- you know, I subscribe to The  
7 Atlantic, The New Yorker, The New Republic, The Sunday  
8 Times, other things. I'm not unaware of the world.

9 So, you know, no one -- when Tory  
10 Burch became popular, no one said "Oh, my gosh, this  
11 is the newest thing that ever happened." There's that  
12 LP person; right? Do we know that one?

13 MR. WOLINSKY: You've got to help me.

14 THE COURT: Lilly --

15 MR. WOLINSKY: Lilly Pulitzer, yeah.

16 THE COURT: Right. I mean, some of  
17 these things go around that the people who were  
18 wearing the originals, you know, I mean, with all the  
19 drugs and all; but they're, like -- they're going to  
20 be on Willard Scott, but they're -- they're tied  
21 around the halls finding each other but very -- it's  
22 easier with the bright -- you know, you need the  
23 brightly colored clothes the older you get because you  
24 can't -- you need to see your target, maybe. It can

1 be just a smear, like Easter egg colors, and you just  
2 know I'm in the right genre.

3 But my point is if that's all you've  
4 got, then we're going to go on their schedule  
5 because -- no. You're going to. So it's not -- I've  
6 listened to your arguments. You're going to.

7 MR. WOLINSKY: I wasn't going to argue  
8 on that one.

9 THE COURT: What I'm saying is you can  
10 figure it out. You can get going.

11 MR. WOLINSKY: Right.

12 THE COURT: There's obvious choice for  
13 the plaintiffs here. I mean, the counterclaimants  
14 here.

15 MR. WOLINSKY: Right.

16 THE COURT: Which is it's -- it's not  
17 exactly clear why one would want a competitor owning a  
18 substantial equity stake in perpetuity. It may be  
19 nice to have leverage, but -- and you get to exert it.

20 But what I mean about in terms of  
21 setting a schedule, you don't get to exert it and then  
22 have your own schedule based on your setoff, when  
23 you've taken your setoff -- you've taken it. And so  
24 you already have obviously a head start on it because

1 you've concluded that someone else's legal rights  
2 should be influenced by your determination. And we  
3 say this a lot of times in takeover cases, right,  
4 which I've done on each side with everybody in the  
5 room, right. Like, if you want to get out of a merger  
6 agreement, you're kind of supposed to know the reasons  
7 why you're getting out of the merger agreement --

8 MR. WOLINSKY: Right.

9 THE COURT: -- and the discovery  
10 process is not allowed -- is not a chance for you to  
11 search for your material adverse effect or your breach  
12 of rep and warranty. You're supposed to know it.

13 No one knows more in the world about  
14 who knew what -- Ms. Burch knows just as much as  
15 Mr. Burch and vice versa. If she believes it's an  
16 infringement --

17 MR. WOLINSKY: Right.

18 THE COURT: -- she's the best person  
19 in the world to explain the uniqueness of her design,  
20 why -- again, I think, on both sides, all these  
21 things, right, there's a level of no one who's in any  
22 form of art, including if you call this art, can claim  
23 entire originality to anything. You're always  
24 inspired. And the least original people are the

1 people who will, you know, claim, you know -- I don't  
2 think there's any way that you would hear Bob Dillon  
3 or Paul McCartney or someone like that say "Well, I  
4 had no influences."

5           So -- especially in this area. Again,  
6 we can just have a fashion show from our own  
7 community. I can send Mr. Abrams, Mr. Williams out in  
8 the -- in the time of the trial and have -- and just,  
9 kind of, bring people in. I can watch the pull-up at  
10 my kids' school which is just -- I got a kid who  
11 bought topsiders. I'm like, what is this? I mean,  
12 you know, how do you actually want to wear these  
13 things?

14           So I'm sorry if you don't think you  
15 can prove up that world. You can allocate time. I  
16 think there's another solution, you know; but I think  
17 that the proposal on the defense side is a reasonable  
18 compromise. I think the three-day proposal, that  
19 probably seems a little lean. Just looking at the  
20 lawyers in the room, there's no way that's going to  
21 happen. But -- and, again, I'm not wed to the first  
22 week of April versus the second week of April versus  
23 the third week of April versus the fourth week of  
24 March. But that time frame.

1 MR. WOLINSKY: Okay.

2 THE COURT: What else do we need to  
3 decide today?

4 MR. WOLINSKY: One other thing. We've  
5 been asking the other side to commit to make their  
6 China-based witnesses available for deposition in Hong  
7 Kong or in a jurisdiction where we can take those  
8 depositions, and we haven't gotten that commitment  
9 yet.

10 MR. ROSSMAN: I can address that, Your  
11 Honor. And thank you for taking the time --

12 THE COURT: Could you identify  
13 yourself just in case --

14 MR. ABRAMS: Yes. It's Andrew Rossman  
15 with Quinn Emanuel for the plaintiffs.

16 What I told Mr. Wolinsky and I'll tell  
17 the Court is we're happy to discuss that issue. And  
18 we're open to doing everything that we can do to try  
19 to make discovery go as quickly as we can. Our -- my  
20 very considerable concern there is expense and time.  
21 I'm informed that you can't take depositions in China  
22 -- it's actually illegal -- even if the parties agree  
23 to take depositions in China. So it will necessitate  
24 getting parties to leave the country and go to Hong

1 Kong, Macao, or come to the United States for the  
2 deposition.

3 THE COURT: I think Mr. Wolinsky said  
4 he could go to Hong Kong.

5 MR. ROSSMAN: Right. I understand  
6 that. What I don't know is, if we're talking about  
7 three witnesses, two witnesses, I don't see us having  
8 any issue at all. If we're talking about 20  
9 witnesses, then I think we're talking about a very  
10 considerable expense.

11 And, you know, one thing that I asked  
12 Mr. Wolinsky, which he has consistently refused to  
13 tell me, is what exactly are his counterclaims so I  
14 can get a sense of what they're trying to understand  
15 in China so I can participate in a constructive way in  
16 that conversation and tell him, you know, who I think  
17 is knowledgeable and --

18 THE COURT: Well, what's the bid  
19 and -- what's the bid and -- excuse me. Sorry for  
20 talking over you. What's the bid-and-ask on an  
21 answer?

22 MR. WOLINSKY: I'm sorry. On?

23 THE COURT: When are you proposing to  
24 file your answer?



1                   MR. WOLINSKY: I'm going to file it  
2 Friday or Monday.

3                   THE COURT: And how many depositions  
4 are you seeking?

5                   MR. WOLINSKY: I can -- there are two  
6 names I know today. Nick Matfus and Gao Jing, but  
7 there may be others. And I can't really tell that  
8 there aren't others until either they answer the  
9 interrogatories or produce some documents.

10                  MR. ROSSMAN: Mr. Matfus I've spoken  
11 to. I can tell you, the Court now that I'm sure that  
12 we'll make him available for deposition. I have not  
13 spoken with Mr. Jing. I don't know what subjects they  
14 want to explore, but I'm happy to take that up and  
15 give him an answer next week after seeing their  
16 counterclaim.

17                  MR. WOLINSKY: Your Honor, there's a  
18 substantive issue here on the foreign witnesses. And  
19 it shouldn't be -- I'm sure it's not lost on you.

20                                What happens in the world is that  
21 Chinese manufacturers knock off American  
22 manufacturers, and you can't get them because of the  
23 lack of process in China.

24                  THE COURT: Oh, no, no. I get it.

1                   MR. WOLINSKY: And, you know, a little  
2 bit of what we've -- what I think is going on here is  
3 that. And the essence of the counterclaim here is not  
4 lost on Mr. -- Mr. Burch. He knows it. The claim is  
5 that he took --

6                   THE COURT: Again --

7                   MR. WOLINSKY: Okay.

8                   THE COURT: You-all wish to have more  
9 time to -- as I recall it, they wanted your answer by  
10 now, or they were hoping.

11                  MR. WOLINSKY: So were we.

12                  THE COURT: You were hoping to have  
13 your answer by now?

14                  MR. WOLINSKY: Yeah.

15                  THE COURT: Okay. I got to -- I got  
16 some proposal to extend time.

17                  MR. WOLINSKY: Yeah. The hurricane  
18 got in the way.

19                  THE COURT: I think they get that.  
20 There's a difference between -- I didn't hear --  
21 that's what I said. I know you guys get all feisty  
22 for a living --

23                  MR. WOLINSKY: Yeah.

24                  THE COURT: -- and ... is I didn't

1 hear -- what I heard from Mr. Rossman was no  
2 resistance to some reasonable production of witnesses  
3 but a concern about overkill and wanting to understand  
4 what you're looking at; that the name -- the one  
5 person that they've already talked to. I am sensitive  
6 to costs. We're not going to take -- and, you know,  
7 this -- we're going to size what is at stake. You  
8 know, I don't know. How many stores are there for --  
9 what is this? --Wonder Bread, C. Wonder?

10 MR. ROSSMAN: C. Wonder, Your Honor.

11 THE COURT: C. Wonder.

12 MR. ROSSMAN: I believe there are  
13 about 12 stores in existence right now.

14 THE COURT: Okay. And how many Tory  
15 Burch establishments are there?

16 MR. WOLINSKY: 85 stores, a thousand  
17 department store outlets.

18 THE COURT: So, you know, nice-growing  
19 enterprises, not yet Amazon, not Wal-Mart.

20 So I think the parties need to discuss  
21 things. That's all I heard. I don't have a dispute.  
22 I mean, I -- what I'm saying is I -- I think the fact  
23 that somebody's manufacturing in China does not exempt  
24 them from anything, and I -- you know, this Court is

1 pretty good at asking, like -- remember, there used to  
2 be a time period where people's investment banks would  
3 refuse to testify, the sell-side advisor around the --  
4 "Well, I won't testify without a commission," you  
5 know. Fine. Then you just say to defendants, "Okay.  
6 So you have no reliance on a banker defense or  
7 anything like that. We just take it out of the  
8 process."

9 I'm assuming Mr. Burch, who controls  
10 this enterprise, if he's got people working in China,  
11 is going to make a reasonable number of them available  
12 if their testimony is relevant.

13 MR. WOLINSKY: That's all we need.

14 THE COURT: What you need to do is  
15 proceed incrementally, you know. And be sensitive to  
16 the goose-and-gander rule. But I think now you have a  
17 schedule. You can talk about that.

18 And, you know, in terms of people in  
19 China never leaving China, they do leave China.  
20 That's how they get these deals. They also leave to  
21 gamble. They leave to have fun. And so, you know,  
22 you might even be able to do some of these in New  
23 York. And they could have personal shoppers at  
24 Bergdorf Goodman who are specially trained to speak

1 their dialect. Which dialect does Mr. Matfus speak?

2 MR. ROSSMAN: English.

3 THE COURT: He doesn't -- he's not --  
4 I only know restaurant Chinese like Szechwan,  
5 Cantonese, Mandarin. But talk to each other about  
6 that.

7 Is there anything else we really need  
8 to do today if we've got that established?

9 MR. LAFFERTY: Your Honor, should we  
10 just coordinate with Your Honor's assistant about an  
11 exact week for the trial?

12 THE COURT: Yeah. But what I want  
13 before you -- you know, one is I'm assuming we're  
14 going to trial.

15 MR. WOLINSKY: Right.

16 THE COURT: We're not doing  
17 dispositive motions; right, both people?

18 MR. WOLINSKY: Yes, correct.

19 THE COURT: (Continuing) -- is flesh  
20 out your briefing schedule and then contact  
21 Ms. Boulden. Everybody's been telling us, like, when  
22 do we want things. Never. I mean, the reality is you  
23 get to a point in life -- and it's been at least a  
24 decade or more now when do you want something? I

1 really don't need any of it. I mean, probably like  
2 you guys in the room, I mean, once your billables for  
3 the year fill up a certain amount and you're past that  
4 anxiety stage, it's pretty cool if it just goes away.

5           So the question for me is not when do  
6 we want it. The question is when are you ready for it  
7 to happen so that we can, you know -- I think we can  
8 try to do is aim for being ready by that -- you know,  
9 the, sort of, middle of the third week of March. I  
10 think for some of you in the room and some of your  
11 team, the last two weeks of March are not a very smart  
12 time to do a trial unless you want to have your  
13 domestic relations situation altered, so that it might  
14 be better to go into April. I'm thinking -- I'm  
15 looking at Mr. Lafferty, but he's probably not the  
16 only one in that situation.

17           So why don't you think about --

18           MR. WOLINSKY: Yeah.

19           THE COURT: -- that, if that makes  
20 sense.

21           MR. LAFFERTY: And, Your Honor, is it  
22 your preference to have two pretrial briefs from each  
23 side or is one acceptable?

24           THE COURT: Again, I don't really

1 care. My sense is I don't want any more than four  
2 briefs. It's been my experience that, especially in a  
3 case like this, where everybody is playing offense and  
4 defense, that it's a lot easier to put together the  
5 schedule in a compact way if everybody -- if there's a  
6 two-brief sequence rather than a three-brief sequence.  
7 If we -- I really give -- and, you know -- so my --  
8 typically that works for me, if it works for everybody  
9 else. I have plaintiffs say "No. I want the three  
10 brief." Then it's their obligation, if they want  
11 that, to go a lot earlier than everybody else  
12 because -- but I think when you both have claims  
13 against each other, a two-brief sequence will allow  
14 you to do what you need to do with a little more  
15 breathing room. But if that works for Mr. Abrams and  
16 Mr. Rossman.

17 MR. ABRAMS: Your Honor, do you happen  
18 to know the Court's availability in the third week of  
19 March or fourth week of March?

20 THE COURT: What I would say is I  
21 would tend to stay away from those two weeks.

22 MR. ABRAMS: Well, any two weeks. I  
23 was using that by way --

24 THE COURT: What I'm saying is I will

1 figure out a way to make you -- to get you a trial in  
2 April, like beginning -- and as early in April as I  
3 can.

4 MR. WOLINSKY: Okay.

5 THE COURT: Until you-all do all the  
6 building blocks, though -- and they have to work --  
7 and I think they will work -- then I can talk to  
8 Ms. Boulden. I also will tell you I reserve the right  
9 to double-book you, which is to give you two start  
10 dates or three start dates in that month, realizing  
11 that, you know -- I mean, we once had one thing last  
12 year where we had eight preliminary injunction  
13 hearings scheduled in six days. And I think it was  
14 something like that. Elane said to me, you know,  
15 "You're going to die if it happens." And I said, "I  
16 don't think it's going to happen. I think what the  
17 world is going to get is just more high-quality  
18 disclosure." And darn, if it didn't just go down like  
19 bowling pins have never gone down for me in a bowling  
20 ally. It just all went away, and people learned much  
21 more about the comparable companies in small cap  
22 deals.

23 So what I'm saying is you might get a  
24 couple dates that you'll have to hold, but we'll get



1 you in in April.

2 MR. CHANDLER: Your Honor, can I  
3 interrupt and ask for a clarification on one point of  
4 your schedule?

5 THE COURT: Sure.

6 MR. CHANDLER: And I apologize. I  
7 have to introduce my partner from the New York office,  
8 Michael Sommer, who has the question.

9 MR. SOMMER: Yes, Your Honor. The  
10 scheduling order proposed by plaintiffs -- we  
11 represent two of the directors, Mr. Hamlin and  
12 Mr. Senk.

13 THE COURT: Uh-huh.

14 MR. SOMMER: The proposed scheduling  
15 order has Mr. Hamlin's answer due today. Mr. Senk's  
16 is due November 15th. We're not filing any  
17 counterclaim. So my request is that the Hamlin date  
18 be made the same as the Senk date, or if that's  
19 objectionable -- if there's no objection, then I'll  
20 sit down.

21 MR. ABRAMS: I advised Mr. Sommer's  
22 partner earlier this week that we would discuss the  
23 appropriate date for their answer at the conclusion of  
24 this conference.

1 MR. SOMMER: Oh. I'm uninformed.  
2 That's fine. I'll sit down.

3 THE COURT: Okay. But you're not  
4 going to file counterclaims. That may simplify the  
5 discussion.

6 MR. SOMMER: Right.

7 THE COURT: Okay. You guys can use  
8 the room. If you want to have a mock trial, have Mr.  
9 Szczerban show his stuff, see whether Sallie's boys --  
10 you know, what he's learned at Wachtell. He's grown  
11 up so much. Is it -- how many bearded partners do you  
12 have, Mr. Wolinsky?

13 MR. WOLINSKY: Wow. Well, our  
14 managing partner is bearded.

15 THE COURT: Who's that?

16 MR. WOLINSKY: Meyer Koplow. And  
17 Mirvis, of course, has the Samson, you know, look but  
18 ...

19 THE COURT: Yeah. You call that a  
20 beard? Like, you're just trying to figure out how  
21 that is. It's a Hasidic rattail, I mean, or something  
22 like that.

23 MR. WOLINSKY: If it's dreadlocks,  
24 we'll all be in trouble.

1                   THE COURT: Well, you know, I mean,  
2 who knows what he does really in the Hamptons. He  
3 hasn't ever shared it fully. We should have a  
4 video -- a Ted cam, and then we can tell whether he  
5 does some sort of combination Maimonides/Marley Fest  
6 together and ...

7                   So we got -- is there anything else  
8 that you -- but, again, you can all talk to each  
9 other.

10                   Any other questions about the  
11 schedule?

12                   (No response)

13                   THE COURT: So, again, I wasn't  
14 really -- to be honest and just so -- not that  
15 Mr. Abrams or Mr. Rossman would. When I was saying  
16 looking at the schedule, when I leave the room and  
17 you-all talk about this, I wasn't talking about any  
18 particulars. I was talking my sense of what was at  
19 stake -- and I was fully aware of the coming  
20 infringement claim -- is the general time frame of the  
21 trial. I wasn't wed to any of these particular dates.  
22 I figured that's something you-all could work out.

23                   MR. WOLINSKY: Just to throw out the  
24 things on the table, they proposed a hundred-hour

1 limitation of depositions on each side. Is that  
2 something -- we would object to that.

3 THE COURT: A hundred hours for -- for  
4 the entirety of depositions?

5 MR. WOLINSKY: Yeah, for each side.

6 THE COURT: You know, again, I don't  
7 have -- I think that's where you-all have to be  
8 sensible. I mean ... you know, I don't see -- that  
9 doesn't logically -- I mean, I could see how each side  
10 could get done with fewer than a hundred hours; but I  
11 could also see, you know -- if everybody needed 15 --  
12 if you had 15 deponents on a side, that could be  
13 tight, depending on who the witness is. I wouldn't be  
14 encouraging much more than that. I mean, there ought  
15 to be a blend. And there ought to be things like, you  
16 know, if China -- I take it you can't even video a  
17 deposition because that would be illegal? Is that  
18 right? Someone would be killed; right? One of our  
19 Internet providers would report the name, and someone  
20 would be executed? All in the name of commerce.

21 But there are ways to do things  
22 efficiently. I mean, it's a shame that that's --  
23 like, for example, the ideal thing to do with some of  
24 the Chinese witnesses would have been if you had a

1 couple you need to do in Hong Kong, but there might be  
2 a couple you do telephonically.

3           So I'm not hep to a hundred hours.  
4 What I am here to do, though, is if, frankly, somebody  
5 on either side proposes 19 deponents where it seems  
6 clear that it's more of an economic leverage strategy  
7 than a discovery strategic, I'll shut that down.

8           MR. WOLINSKY: I hope you don't have  
9 the impression that that's -- that we're trying to use  
10 litigation -- the costs of litigation as a weapon.

11           THE COURT: I'm not asking -- I'm not  
12 asking anybody to reveal any guilt or anything --  
13 betray any sense of guilt.

14           MR. WOLINSKY: I have none on that  
15 point.

16           THE COURT: Okay. Then don't -- then  
17 don't worry. What I'm saying is it could be -- if you  
18 can all get the depositions done in 62.3 hours on each  
19 side, you should. But a hundred hours is just an  
20 artificial thing.

21           I also don't know -- for example,  
22 depositions are often longer than they should be, not  
23 because the person is taking a long time asking  
24 questions, because somebody says "Objection."

1 Mr. Abrams knows that the real reasons why the board  
2 did this were blank and blank and blank. And it's  
3 distracting the witness from the fact that they're  
4 blank and blank and blank, and the witness' inability  
5 to answer for himself blank and blank and blank and  
6 blank has now been corrected by me, indicating that  
7 the real reasons he did what he did is blank and  
8 blank. I mean, I've seen plenty -- everybody in  
9 Chancery has seen plenty of transcripts -- and you've  
10 been at those depositions -- where, frankly, it's much  
11 more from the obstreperous defense side than there is  
12 from the asking side.

13                   So I don't really know enough about  
14 the case. I will say this -- and part of my instinct  
15 about it is I really don't think you're going to have  
16 a ginormous number of key witnesses. I think you know  
17 who a lot of the key witnesses are. There's going to  
18 be a group of people who Ms. Burch knows Mr. Burch  
19 started this business with, and you're going to want  
20 to focus on them and how they created the stores in  
21 the way they did and the products they did. Mr. Burch  
22 certainly knows who he's suing. And so if you  
23 actually focus in a real way on what your core things  
24 are, you'll probably get there.

1                   And I'm always going to be available  
2 to talk about it. As I said, if you want to have a  
3 extended conference -- if you want to have a  
4 conference that's more focused after you-all talk  
5 about it. But I think you should exchange lists and  
6 those -- and those sorts of things. And -- and then  
7 just let me know. But otherwise, we'll talk about  
8 April. It's actually a very good time of year for  
9 this kind of clothing. I mean, it's not a real  
10 January-February line in either store, is it?

11                   MR. WOLINSKY: I'm looking to my  
12 client.

13                   MR. ISEN: We do have a good holiday  
14 line as well.

15                   THE COURT: You have a good holiday  
16 line? I was talking about January-February. I'm not  
17 sure that's holiday.

18                   MR. ISEN: Resort.

19                   THE COURT: Resort. Ah. Never heard.  
20 Lilly Pulitzer never did that, though. It is all  
21 unprecedented.

22                   You know, I've actually -- totally  
23 unrelated to this case, I've been deep in it, in an  
24 autumnal Cheever phase. And so I've been reading all

1 kinds of Cheever. So I'll have to just keep that up  
2 through the -- through the case. Have you read your  
3 Cheever lately? You know who he is? I mean, it's --  
4 you know, and Mad Men will be coming back at some  
5 point in time. So I think if you read Cheever, go see  
6 the new Virginia Woolf revival and watch Mad Men.  
7 We'll be all geared up and in the mood for this sort  
8 of drunken WASP fest. Are they WASPs? Are the  
9 Burches WASPs? Do we know?

10 MR. ISEN: I don't know how to answer  
11 that question.

12 THE COURT: Well, it's some sort of --  
13 it's not -- I mean, it's nothing wrong -- it's called  
14 White Anglo-Saxon Protestant. So you don't know.

15 MR. ISEN: No --

16 THE COURT: So, I mean --

17 MR. ISEN: -- I mean, Tory Burch is  
18 Jewish and Chris is not Jewish.

19 THE COURT: Okay. But not Jewish  
20 doesn't make you a WASP, because it could make you an  
21 equally excluded faith like Catholic; right? I mean,  
22 that's not a WASP. You know, a WASP is a WASP. So,  
23 you know -- I think you're going to have to have  
24 interrogatories about who's a WASP. And I'll



1 certainly be attacked as anti-WASP, probably, and then  
2 I love all WASPs. I'm bringing actually Rodman Ward,  
3 Jr. in as my expert because I always used to tell Rod  
4 that he actually had a lineage chart in his basement  
5 which had all of the DuPont family trees on it. It  
6 was like some people have war rooms. He had that to  
7 determine how they were actually related to the DuPont  
8 family. So I think we might be able to have some  
9 unique experts in Delaware. And I think Mr. Williams  
10 is bringing some of his former partners back.

11 MR. WILLIAMS: (Inaudible)

12 THE COURT: Morris Nichols was more of  
13 an upstart firm, but I think they had -- they did have  
14 some -- some people who would claim that; right?

15 So I won't say anything more on the --  
16 on the transcript. I'm going to go off the transcript  
17 and then talk about which former partners we actually  
18 want to have come back. Thank you.

19 ALL COUNSEL: Thank you, Your Honor.

20 (Discussion off the stenographic  
21 record from 2:47 p.m. until 2:49 p.m.)

22 THE COURT: Have a good day.

23 (The proceedings concluded at 2:49 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 33 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 2nd day of November 2012.

/s/ Neith D. Ecker

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Official Court Reporter  
of the Chancery Court  
State of Delaware

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