

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RICHARD D KATZMAN,

Plaintiff,

-v-

HELEN OF TROY TEXAS CORPORATION and HELEN
OF TROY LIMITED,

Defendants.
-----X

12 Civ. 4220 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

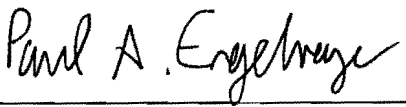
The Court has received defendants' letter, dated July 20, 2012 (attached), requesting permission to file the May 14, 2012 Indemnification Letter under seal. Defendants explain that plaintiffs have advised them that, "if [Defendants] file the Letter not under seal, Defendants will be in breach of the Merger Agreement."

On June 21, 2012, during the pre-motion phone conference with the parties, the Court made abundantly clear that, notwithstanding plaintiff's desire that the Indemnification Letter not be made public, the Court expected it to be filed publicly on the docket of this case. The Court emphatically rejected plaintiff's reason for seeking the sealing of the document, *i.e.*, to minimize the likelihood that tax authorities would review the contents of the letter, as not only meritless, but affirmatively contrary to the public interest. *See* Conference Tr. 27-28 (Dkt. 16). The Court adheres to this view. Further, the Indemnification Letter must be made available to enable the Court to assess plaintiff's claims in the Complaint. As the Court stated during the pre-motion conference, the Court cannot meaningfully address plaintiff's claims in this case without reviewing that letter.

In the Court's view, it is plaintiff's responsibility, as the party that brought this lawsuit that clearly implicates the Indemnification Letter, to file the letter publicly. The Court therefore orders that **plaintiffs** file the Indemnification on the public docket of this case by the close of business on Wednesday, July 25, 2012.

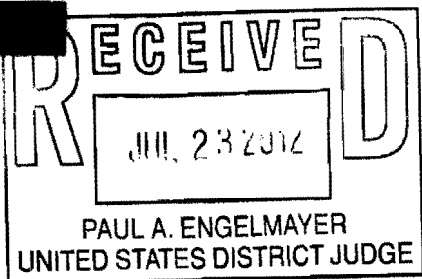
Failure to so file may result in dismissal of plaintiff's claims.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: July 23, 2012
New York, New York



Baker & McKenzie LLP
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
United States

Tel: +1 214 978 3000
Fax: +1 214 978 3099
www.bakermckenzie.com

Mark D. Taylor
Tel: +1 214 978 3089
Mark.Taylor@bakermckenzie.com

July 20, 2012

The Honorable Paul A Engelmayer
United States District Court
for the Southern District of New York
500 Pearl St., Room 670
New York, NY 10007-1312

By Hand Delivery

- Aisa Pacific
- Bangkok
- Beijing
- Hanoi
- Ho Chi Minh City
- Hong Kong
- Jakarta*
- Kuala Lumpur*
- Manila*
- Melbourne
- Shanghai
- Singapore
- Sydney
- Taipei
- Tokyo
- Europe, Middle East & Africa
- Abu Dhabi
- Almaty
- Amsterdam
- Antwerp
- Bahrain
- Baku
- Bercelona
- Berlin
- Brussels
- Budapest
- Cairo
- Doha
- Dusseldorf
- Frankfurt/Main
- Geneva
- Istanbul
- Kyiv
- London
- Luxembourg
- Madrid
- Milan
- Moscow
- Munich
- Paris
- Prague
- Riyadh
- Rome
- St. Petersburg
- Stockholm
- Vienna
- Warsaw
- Zurich
- Latin America
- Bogota
- Brasilia*
- Buenos Aires
- Caracas
- Guadalajara
- Juarez
- Mexico City
- Monterrey
- Porto Alegre*
- Rio de Janeiro*
- Santiago
- Sao Paulo*
- Tijuana
- Valencia
- North America
- Chicago
- Dallas
- Houston
- Miami
- New York
- Palo Alto
- San Francisco
- Toronto
- Washington, DC
- * Associated Firm

RE: *Richard D. Katzman v. Helen of Troy Texas Corp. and Helen of Troy Ltd.* Case No. 12 Civ. 4220 (PAE)

Dear Judge Engelmayer:

As counsel for Defendants Helen of Troy Texas Corp. and Helen of Troy Ltd. (collectively, "Defendants" or "HOT"), we write pursuant to your Individual Rule 4(A) to request an order from the Court permitting Defendants to file the May 14, 2012 Indemnification Letter (hereinafter the "Letter") under seal as an exhibit to Defendants' forthcoming First Amended Answer and Counterclaims ("Counterclaims").¹ We have conferred with Plaintiff's counsel, and Plaintiff is not opposed to our request. In fact, Plaintiff's position is that if we file the Letter not under seal, Defendants will be in breach of the Merger Agreement, which position is the purpose for the present request.

As a preliminary matter, we acknowledge the Court's statement at the pre-motion conference on June 21, 2012, that the Court expects the Letter to be a matter of public record prior to the parties' next conference with the Court. (Pre-Motion Conference Tr. 27:21-28:10, June 21, 2012, attached hereto as Exhibit 2.) Notwithstanding that Defendants fully understand the Court's mandate, during that Conference and in subsequent discussions with Defendants' counsel, Plaintiff's counsel made clear that if Defendants raise their

¹ In accordance with Individual Rule 4(A), a copy of Defendants' Counterclaims is attached hereto as Exhibit 1, including the Letter, which is attached as Exhibit A thereto. Pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), Defendants intend to file the Counterclaims on or before July 27, 2012. This is because, on July 5, 2012, counsel for both Parties met and reached a compromise that Defendants would delay filing their Counterclaims with the Answer that was filed on July 6, 2012, in the hope that the Parties might reach a settlement prior to July 27, 2012. However, the Parties have not been able to reach a settlement thus far, nor does it appear that a settlement will be reached by July 27, 2012 and, therefore, Defendants intend to file their Counterclaims following the Court's ruling on the present request.



indemnification claims in this lawsuit—and specifically, the 18 claims identified in the Letter—Plaintiff intends to pursue an additional claim against Defendants for making the 18 claims public. (*Id.* 28:14-18.)

Defendants believe such a claim would be meritless and legally incorrect. In addition, this Court responded to Plaintiff's counsel that it would be "skeptical on the idea that by defending their rights...[Defendants] are somehow jeopardizing their rights of the agreement by litigating and then having the judge insist that a document has to be public." (*Id.* 28:20-25.)

Nevertheless, Defendants submit this letter with the intention of obtaining an order permitting Defendants to submit the Letter under seal to avoid further claims from Plaintiff, even though meritless. Specifically, Defendants believe the Letter is key to their defense of Plaintiff's claims. As the Court noted, the Letter is "the heart of the litigation here." (*Id.* 27:21-25.) In addition, Federal Rule of Civil Procedure 13 arguably requires Defendants to assert the 18 claims in the Letter as compulsory counterclaims in this lawsuit, lest Defendants be barred from asserting them in a later suit. *See* Fed. R. Civ. P. 13(a); *see also Banque Indosuez v. Trifinery*, 817 F. Supp. 386, 387 (S.D.N.Y. 1993) (holding that because the plaintiff chose to file suit in federal court, the Federal Rules of Civil Procedure applied, and the New York state law permitting all counterclaims to be permissive, did not; thus, the plaintiff could not enforce defendant's contract not to file counterclaims) (attached hereto as Exhibit 3).

Plaintiff here, like the plaintiff in *Trifinery*, chose to file this suit adjudicating the 18 claims in federal court. Thus, Defendants' 18 claims are arguably compulsory counterclaims which Defendants must assert in order to avoid being barred by the Federal Rules. To bring these claims, Defendants must rely on the May 14, 2012 Letter. It would be unjust if Defendants were precluded from using the Letter in defense of Plaintiff's claims and, more importantly, in support of their Counterclaims, because Plaintiff could use the filing as grounds for additional claims. To avoid this result, Defendants respectfully request the Court enter an order permitting Defendants to file the May 14, 2012 Indemnification Letter under seal as an attachment to their forthcoming Counterclaims. Alternatively, Defendants respectfully request an order from the Court that clarifies the Court's previous statement that the Letter must be filed as a matter of record.



Sincerely,

A handwritten signature in cursive script that reads "Mark D. Taylor".

Mark D. Taylor

kjw/THM

Enclosures (3)

cc: Steven M. Kayman, Counsel for Plaintiff (by e-mail)
Julie A. McCane, Counsel for Plaintiff (by e-mail)
Stuart A. Youngs, Counsel for Plaintiff (by e-mail)
Charles B. Cummings, *of the firm*
Teresa H. Michaud, *of the firm*