

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration Between:

GEORGE WATTS & SON, INC.

and

Case No. 13 E 181 00983 99

TIFFANY AND COMPANY

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**BRIEF IN SUPPORT OF CLAIMANT'S MOTION TO  
COMPEL DISCOVERY, OR IN THE ALTERNATIVE, TO  
PRECLUDE THE ADMISSION OF EVIDENCE**

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**INTRODUCTION**

There are primarily two issues this tribunal will be asked to resolve at the final hearing on the merits of this matter. The first is whether George Watts & Son, Inc. ("Watts") qualifies as a "dealer" under the Wisconsin Fair Dealership Law ("WFDL"). If Watts is a dealer, this tribunal will decide whether Tiffany and Company ("Tiffany") complied with the terms of the WFDL when it terminated Watts' exclusive dealership to sell Tiffany brand tableware in the State of Wisconsin. Regarding the latter issue, Watts has attempted -- without success -- to obtain discovery from Tiffany. Regrettably, Watts believes that Tiffany possesses documents responsive to Watts' document requests yet refuses to produce such documents.

**ARGUMENT**

1. WATTS IS ENTITLED TO REVIEW DOCUMENTS RELATED TO THE REASONS FOR TIFFANY'S DECISION TO TERMINATE WATTS' EXCLUSIVE DEALERSHIP.

The purpose of the WFDL is to provide "thousands of small businessmen in Wisconsin," like Watts, with a type of "tenure." Remus v. Amoco Oil Co., 794 F.2d 1238, 1240 (7<sup>th</sup> Cir.

1986); Foerester Inc. v. Atlas Metal Parts Co., 313 N.W.2d 60, 63 (Wis. 1981). The WFDL prohibits Tiffany from terminating, canceling, failing to renew or substantially changing the competitive circumstances of its dealership agreement with Watts absent statutorily defined “good cause,” after providing Watts with written notice and an opportunity to cure. Sec. 135.03 and 135.04, Wis. Stats.

“Good cause” under the WFDL is defined to include:

Failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor ... which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers ...

Sec. 135.04(2), Wis. Stats. In other words, there are two requirements for good cause: (1) failure to comply with essential and reasonable requirements and (2) non-discriminatory enforcement of those requirements. Though the Wisconsin Supreme Court has never addressed the issue, the Seventh Circuit has held good cause for termination of a dealership may exist where a supplier is “losing substantial amounts of money under the relationship.” Morley-Murphy Co. v. Zenith Electronics Corp., 142 F.3d 373, 377 (7<sup>th</sup> Cir. 1998), citations omitted. Good cause does not exist for suppliers “merely upon a showing that they believed they could make more money without the particular dealer.” Id.

Tiffany claims to have terminated its relationship with all independent retailers of Tiffany merchandise. When asked for the justification for the decision, Tiffany stated, “Little or no profitability as a channel of distribution, difficulty in maintaining display standards, and cost issues in complying with inventory control regulations imposed by large accounts are the reasons for the closure of the U.S. Trade Division.” Tiffany Resp. to Interrogatory No. 2.

Here, Watts claims that Tiffany terminated Watts’ exclusive dealership to sell Tiffany

brand tableware absent “good cause.” Watts is entitled to take discovery to determine whether Tiffany terminated Watt’s exclusive dealership because Tiffany was “losing substantial amount of money” or whether Tiffany simply “believed [it] could make more money without” Watts. Morley-Murphy, 142 F.3d at 377.

## **II TIFFANY HAS FAILED TO FULLY RESPOND TO SEVERAL OF WATTS’ REQUESTS FOR PRODUCTION OF DOCUMENTS.**

Watts served two separate document requests on Tiffany, copies of which are attached hereto as Exhibits A and B. As described more fully below, it is apparent to Watts that Tiffany must possess relevant, requested documents that have not previously been produced.

### **1. Document Request No. 3.**

In the single most important discovery request served by Watts, Watts demanded that Tiffany produce the following:

All documents considered, relied upon, or created by any person who played any role in the decision-making process that Tiffany would discontinue sales to domestic independent retailers, regarding such process or decision.

Tiffany did not pose an objection to the request, and identified and produced approximately five documents that Tiffany said were responsive.

Watts believes that Tiffany’s response is incomplete because, to date, Tiffany has not produced a single document that even mentions the possibility of Tiffany terminating its relationship with independently-owned retail dealers of Tiffany tableware – for any reason, much less any justifiable economic reason under Morley-Murphy. In fact, the documents produced by Tiffany evidence the exact opposite intention. Tiffany’s “North American Trade Modification & Expansion Strategy 5 Year Plan,” the document repeatedly referenced by Tiffany as its blueprint

for the termination of its dealers, states that Tiffany intended to stop selling tableware only to department stores. See TIFF 0021, attached hereto as Exhibit C. The Plan further states that “the independent tabletop retailer [a category that includes Watts] will become our primary focus in trade distribution to the gift and tabletop customer.” Id. (emphasis added)

Tiffany contends there is not a single other memo, e-mail, executive summary, letter, report, or document of any kind, any place, that discusses the costs and benefits to Tiffany of terminating its relationship with its independently-owned tableware dealers, a decision so large that it has been characterized by Tiffany as one requiring the dismantling of an entire “division” of Tiffany. The contention is incredible. Watts requests that this tribunal order Tiffany to produce all such documents, and any other that are reasonably responsive to Request No. 3.

2. Document Request No. 6.

Watts has requested all documents that mention or refer to it: Document Request No. 6 simply requests “All documents that refer or relate to George Watts & Son, Inc.”<sup>1</sup> Tiffany alleges that the request is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.” Nonetheless, Tiffany states that it has produced the Watts file maintained by someone named Robert Cepek.

It is not sufficient that Tiffany search the files of a single Tiffany officer. In its responses to documents requests and interrogatories, Tiffany repeatedly states that the decision to terminate Watts’ dealership was made by “senior management.” Watts also had substantial contact with several of Tiffany’s non-senior management personnel, including Jan Mohr, Linda Kennedy,

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<sup>1</sup> Ironically, Tiffany served an almost identical request on Watts. Tiffany’s first document request demanded “Any and all documents relating to Watts’ relationship with Tiffany.” Counsel for Watts made a single objection, that the request was not limited to a specific period of time. Nonetheless, Watts complied with the request.

Susan Svitak, Lori Hubers, Robert Cepek, and Lisa Roman. Such persons may possess documents that bear on the issue of whether Watt is entitled to protection under the WFDL. They may also possess documents that describe whether Tiffany believes Watts failed to comply with Tiffany's "essential and reasonable requirements," one of the grounds for "good cause" under the WFDL.

3. Document Request No. 22.

Watts demanded in Request No. 22 that Tiffany produce the following:

Documents sufficient to identify all domestic independent jewelers and department stores in any way affected by Tiffany's decision to discontinue marketing to domestic independent retailers.

Tiffany objected on the grounds that it believed the request was overbroad and not relevant.

To establish good cause for the termination of Watts' dealership – whether that cause is Tiffany's economic justification or something else – Tiffany must prove that its actions were nondiscriminatory. Sec. 135.02(4), Wis. Stats. See also, Zenith, 142 F.3d at 376. Watts is entitled to learn the identities of all entities affected by Tiffany's decision to terminate independent sellers of Tiffany tableware. Watts has the right to speak with them and determine whether their appointments were terminated, like Watts, and if so whether the terminations were on the same terms and for the same reasons.

Watts quite simply is not required to take Tiffany's word that its actions are uniform. In fact, Watts already has reason to believe that Tiffany's actions are not uniform. In Tiffany's "North American Trade Modification & Expansion Strategy 5 Year Plan," again, the document Tiffany says is the outline for the termination of independent retailers, Tiffany states that it will "Retain 'In Market' independent tabletop trade accounts (40 independent tabletop doors in 21 states)." See TIFF 0022, attached hereto as Exhibit D. Thus, it appears that there may be at

least 40 stores like Watts that have not been terminated.

**III THIS TRIBUNAL SHOULD LIMIT TIFFANY'S EVIDENTIARY RECORD TO DOCUMENTS EARLIER PRODUCED IF TIFFANY FAILS TO PRODUCE ADDITIONAL DOCUMENTS.**

In the event that Tiffany cannot or will not produce additional documents to fully respond to the Requests identified above, Watts requests that this tribunal issue an order that precludes Tiffany from relying on any document -- not earlier produced -- when Tiffany presents its case to this tribunal. Watts also requests that the order preclude all of Tiffany's witnesses from giving testimony that refers or relates to documents not earlier produced.

**CONCLUSION**

Watts is entitled to an order that Tiffany fully and completely response to its Documents Request Nos. 3, 6, and 22. In the alternative, Watts requests that Tiffany be prohibited from introducing into evidence or providing testimony about documents not earlier produced.

Dated this \_\_\_ day of January, 2000.

BRUCE R. BAUER  
MATTHEW J. KADING

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Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee WI 53202  
(414) 277-5000

Attorneys for Claimant  
George Watts & Son, Inc.