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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TORONTO ASIA TELE ACCESS  
TELECOM INC., now known as TATA  
TELECOM INC., a company organized  
under the laws of Canada, and  
MANMOHAN SINGH THAMBER, a  
natural person residing in Canada,

Plaintiffs,

v.

TATA SONS LTD., a company organized  
under the laws of India,

Defendant.

CASE NO. C09-1356 RSM

ORDER GRANTING PLAINTIFFS’  
MOTION FOR LEAVE TO AMEND  
AND WITHDRAW ADMISSIONS

This matter comes before the Court on Plaintiffs’ Motion for Leave to Amend and Withdraw Admissions. Dkt. #31. Pursuant to Federal Rule of Civil Procedure 36(b), “the Court may permit the withdrawal or amendment of [admissions] if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.” Thus, a court may grant a motion pursuant to Rule 36(b) where (1) withdrawal or amendment of the admissions would promote the

1 presentation of the merits of the case and (2) where it would not result in prejudice to the  
2 requesting party.

3 The first part of the test set forth under Rule 36(b) is satisfied when upholding the  
4 admissions would nearly eliminate any presentation of the merits of the case. *Hadley v. United*  
5 *States*, 45 F.3d 1345, 1348 (9<sup>th</sup> Cir. 1995). Defendant argues that upholding Plaintiffs’  
6 admissions would not eliminate the need for the presentation of the merits of the case. However,  
7 the action before the Court is for trademark infringement. The admissions concern the type of  
8 product or service offered by Plaintiffs and the similarity of the marks. In a trademark  
9 infringement action, the product or service to which the mark is attached and the similarity of the  
10 marks themselves are central to the determination of “likelihood of confusion” and infringement  
11 under the Lanham Act. 15 U.S.C. §1114. Therefore, the withdrawal or amendment of  
12 admissions would promote the presentation of the merits of this case.

13 The second part of the Rule 36(b) test concerns prejudice against the party who obtained  
14 the admissions. The prejudice contemplated by Rule 36(b) is not simply that the party who  
15 obtained the admission will now have to convince the factfinder of its truth. *Hadley*, 45 F.3d at  
16 1348 (citing *Brook Village N. Assocs. V. General Elec. Co.*, 686 F.2d 66, 70 (1<sup>st</sup> Cir. 1982)).  
17 Rather, the prejudice relates to the difficulty a party may face in proving its case caused, for  
18 example, by the unavailability of key witnesses because of the sudden need to obtain evidence.  
19 *Id.* Defendant contends that it would be severely prejudiced because it would be forced to  
20 conduct discovery on an expedited timeframe and because key witnesses would be unavailable  
21 until after the close of discovery.

22 Courts are more likely to find prejudice when a motion for withdrawal is made in the  
23 middle of trial. *Id.* The Ninth Circuit concluded that a lack of discovery, without more, does not  
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1 constitute prejudice. *Conlon v. United States*, 474 F.3d 616, 624 (9<sup>th</sup> Cir. 2007). Moreover,  
2 *Conlon* specifically notes that a discovery period could be reopened and that prejudice must  
3 relate to the difficulty a party may face in proving its case at trial. *Id.* In the case at hand, trial is  
4 not imminent, and though Defendant has made clear that it would be inconvenienced by having  
5 to engage in additional discovery, Defendant has not made a showing that its ability to prove its  
6 case at trial would be prejudiced by granting Plaintiffs' motion. Furthermore, while discovery  
7 may be drawing to a close, it is not yet over and can be extended. Therefore, Defendant has not  
8 demonstrated the requisite prejudice under Rule 36(b).

9 (1) Plaintiffs' Motion for Leave to Amend and Withdraw Admissions (Dkt. #31) is

10 GRANTED.

11 (2) Plaintiffs must submit their amended admissions within 10 days from the date of this

12 Order.

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14 Dated February 22, 2011.

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18 RICARDO S. MARTINEZ  
19 UNITED STATES DISTRICT JUDGE  
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