



Fox Rothschild LLP
ATTORNEYS AT LAW

100 Park Avenue, Suite 1500
New York, NY 10017
Tel 212.878.7900 Fax 212.692.0940
www.foxrothschild.com

Zev Singer
Direct Dial: (212) 878-7928
Email Address: zsinger@foxrothschild.com

VIA ECF

Hon. George B. Daniels
United States District Judge
Southern District of New York

May 11, 2016

**Re: Cargian v. Breitling USA, Inc.
Civil Action No.: 15-cv-01084**

Your Honor:

We represent defendant Breitling USA, Inc. (“Defendant”) in the above-referenced matter. We write in response to plaintiff’s (“Plaintiff”) request for supplemental briefing on the issue of his gender stereotyping claim, in connection with Defendant’s motion for summary judgment (Docket No. 57).

Defendant contends that supplemental briefing is not warranted as there were no “new” issues raised by the Court at the May 2, 2016 oral argument. Plaintiff’s request is merely an effort to reargue and re-brief issues that could and should have been raised in his brief, and therefore this “second bite at the apple” should be rejected. In fact, Defendant squarely addressed the issue of conflating gender stereotyping with sexual orientation claims in its initial moving brief (Docket No. 41, pages 5-9) and Plaintiff had an opportunity to respond (and did so, Docket No. 45, pages 19-23). Defendant further submits that it was improper for Plaintiff to attach (and thereby, submit) his supplemental letter brief to his request, thus already submitting the supplemental letter-brief to the Court without prior permission to do so.

Furthermore, on the merits of Plaintiff’s proposed brief (should the Court choose to accept it), Plaintiff has somehow unilaterally determined that *Dawson v. Bumble & Bumble*, 398 F.3d 211 (2d Cir. 2005), the controlling Second Circuit law on the issue of gender stereotyping claims, “inappropriately” determined the scope of gender stereotyping claims. Plaintiff argues that instead, an *earlier* Second Circuit case, *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004) should be the controlling standard for gender stereotyping cases in lieu of the later *Dawson* holding. However, *Dawson* explicitly discussed and distinguished the *earlier Back* case. See *Dawson*, 398 F.3d at 219-223. Therefore, Plaintiff’s argument is contrary to both the rules of precedent and the explicit discussion in *Dawson* of the *Back* case. In reality, *Dawson* and *Back* do not contradict; rather they apply the law on gender stereotyping to different sets of facts. *Dawson*, the latter case, set forth the controlling standard for gender stereotyping claims used by Defendants to argue that Plaintiff’s claim should be dismissed.

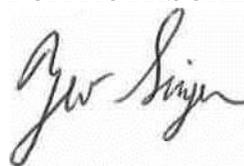
Even considering *Back*, the facts there can clearly be distinguished from the instant case. There, the plaintiff alleged that numerous gender-based comments were said to her regarding her motherhood and gender, including comments about her getting pregnant again, asking her to wait to have another child, and her ability to perform her job while having children. The Court found that these comments were enough to create a genuine issue of material fact regarding gender-discrimination animus on the part of the employer. In contrast here, Plaintiff concedes that no such comments were made about his gender, but rather that he was merely excluded because he was not participating in sports conversations.

Finally, even in Plaintiff's re-argument in his proposed supplemental letter-brief, he has again failed to answer the central issue the Court raised at oral argument (and that Defendant raised in its brief) – *how* he was allegedly discriminated against on the basis of his gender through gender stereotyping under the appropriate Second Circuit standard. Plaintiff again claims (as he did in his brief and at oral argument) that the fact that he did not participate in sports conversations somehow constituted gender-stereotyping and discrimination. As was discussed more fully in Defendant's moving and reply briefs, and as the Court pointed out at oral argument, being allegedly treated differently because of being a sports fan (or not) will not sustain a claim for gender-stereotyping because it is not the differential treatment of someone on the basis of any actual gender-stereotype¹.

Accordingly, as there is no genuine issue of material fact regarding Plaintiff's Title VII gender discrimination claim, it should be dismissed (along with all of Plaintiff's other claims, as discussed in Defendant's summary judgment moving papers).

Respectfully submitted,

FOX ROTHSCHILD LLP

A handwritten signature in cursive script, appearing to read "Zev Singer".

Zev Singer

CC: All Attorneys of Record (via ECF)

¹ Plaintiff's other assertions in his supplemental letter brief that he claims support his gender stereotyping claim have also previously been addressed by Defendant and do not create a genuine issue of material fact. Contrary to his unsupported allegation that he was forced to room with a woman on company trips (which, in any case, does not support a claim of gender-stereotyping), Plaintiff voluntarily chose to share rooms with his close female friend, evidenced (and cited to) in the record by an email he sent and his prior history with her. In addition, the marketing materials Defendant had used during Plaintiff's entire tenure at the company, images of a famous historical pinup, also have no bearing on his claim of gender-stereotyping discrimination.