IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNEDY INDUSTRIES, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
BRIAN APARO, et al.	:	NO. 04-5967

MEMORANDUM

Bartle, C.J. July 6, 2006

In an order dated June 15, 2006, this court denied Wrestling One's motion for summary judgment due to the presence of genuine issues of material fact. Wrestling One seeks reconsideration of that order.

A timely motion for reconsideration under Local Rule 7.1(g) is considered analogous to a motion to alter or amend judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Our Court of Appeals has held that the purpose of a motion for reconsideration under Rule 59(e) is "to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A court may grant a motion for reconsideration or alter or amend a judgment if the party seeking reconsideration "shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary

judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

Because of the courts' interest in the finality of judgments, "[m]otions for...reconsideration should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court." Ciena, Corp. v. Corvis, Corp., 352 F. Supp. 2d 526, 527 (D. Del. 2005). A motion for reconsidering may not be used to give a litigant a "second bite at the apple." See Bhatnagar v. Surrendra Overseas Ltd., 52 F.3d 1220, 1231 (3d Cir. 1995). A litigant that fails in its first attempt to persuade a court to adopt its position may not use a motion for reconsideration either to attempt a new approach or correct mistakes it made in its previous one. A motion for reconsideration "should not be used as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." Brambles USA, Inc. v. Blocker, 735 F. Supp. 1329, 1240 (D. Del. 1990) (quoted in Bhatnagar, 52 F.3d at 1231). Therefore, it is "improper...to ask the Court to rethink what [it] had already thought through––rightly or wrongly." Glendon Energy Co. v. Bor. of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993).

Wrestling One's motion for reconsideration does not

meet the standard required by our Court of Appeals. There has been no intervening change of controlling law since June 15. Also, no new evidence is available that could not easily have been previously provided to the court. Wrestling One contention that the prior order contains manifest errors of law or fact is unpersuasive. There are genuine disputes of material fact including, but not limited to, whether Wrestling One was "wilfully blind" under the Lanham Act.

Accordingly, Wrestling One's motion for reconsideration of this Court's order of June 15, 2006 will be denied.

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ORDER

AND NOW, this 6th day of July, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant Wrestling One for reconsideration of this court's order of June 15, 2006 is DENIED.

BY THE COURT:

/s/ Harvey Bartle III
C.J.