

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division**

	)	
<b>O’SULLIVAN FILMS, INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>PRECISION ROLL GRINDERS, INC.</b>	)	<b>Civil Action No. 5:09CV00062</b>
	)	
<b>Defendant / Third-Party Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>WALZEN IRLE GmbH</b>	)	
	)	
<b>Third-Party Defendant.</b>	)	
	)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
TO STAY THIRD-PARTY COMPLAINT**

The Third-Party Defendant WALZEN IRLE GmbH (hereinafter “Walzen”), by counsel, pursuant to Rule 12(b)(1) and (6), F.R.Civ.P., moves this Honorable Court to dismiss the Third-Party Complaint without prejudice or, in the alternative, to stay the third-party action, by reason of the existence of a binding agreement to arbitrate disputes of the type asserted in the Third-Party Complaint, depriving this Honorable Court of appropriate subject matter jurisdiction over the causes of action framed in the Third-Party Complaint, which fails to state justifiable claims upon which relief may be granted, and in support thereof, states as follows:

1. The Third-Party Plaintiff, Precision Roll Grinders, Inc. (hereinafter “PRGI”) recites the existence and applicability of, and substantially predicates its right to recover over against Walzen upon, a Distributor Agreement between the parties. *See* Third-Party Complaint, paragraphs 4, 5, 7, 11, and 17 (among others), and Exhibit A thereto.

2. The Distributor Agreement is attached to, and thereby becomes a part of, the Third-Party Complaint, as Exhibit A, as if it had been specifically pleaded in all its particulars.

3. Article XII (2) of the Distributor Agreement specifically provides for arbitration of disputes between the parties in the following terms:

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the rules of the International Arbitration Rules of International Centre for Dispute Resolution of the American Arbitration Association. The arbitration shall be held in New York City and the arbitration proceedings shall be conducted in the English language.

4. The purported claims, causes of action and remedies sought in the Third-Party Complaint constitute disputes within the meaning of the arbitration provision which are subject to being “settled by arbitration”, and such provision is enforceable against, and binding upon, PRGI.

5. Having agreed to arbitrate the disputes that are the subject of the Third-Party Complaint, PRGI should not be permitted to pursue them in this Court which, by virtue of the parties’ binding agreement, lacks subject matter jurisdiction over the Third-Party Complaint, and in any event, the Court should enforce the provision for arbitration and dismiss the Third-Party Complaint without prejudice.

6. In the alternative, if the Court is not disposed to dismissal, it should stay the third-party action pending initiation of the arbitration proceedings to which the parties have clearly agreed.

7. The Third-Party Plaintiff pleads no facts, nor other bases, for avoidance of the parties’ agreed choice of the forum and method of dispute resolution, which constitutes an affirmative element of the Third-Party Complaint.

8. The operative provisions of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, support and counsel dismissal of the Third-Party Complaint by virtue of the contracting disputants' clear intention to provide for arbitration in lieu of court proceedings.

WHEREFORE, upon the grounds above assigned and those in addition which may be urged upon hearing hereof, the Third-Party Defendant WALZEN IRLE GmbH by counsel, respectfully moves this Honorable Court to dismiss the Third-Party Complaint against it and for its costs in this behalf expended.

WALZEN IRLE GmbH  
By Counsel

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

/s/ Thomas L. Appler

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of March, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send notification of such filing (NEF) to the following:

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I HEREBY CERTIFY that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

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