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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HOMELAND HOUSEWARES, LLC, a
California LLC; NUTRIBULLET,
LLC, L a California LLC,

Plaintiff,

v.

SHARKNINJA OPERATING LLC,
Defendants.

Case No. CV 14-03954 DDP (MANx)

**ORDER DENYING CROSS-MOTIONS FOR
SUMMARY JUDGMENT OR PARTIAL
SUMMARY JUDGMENT AND MOTION TO
EXCLUDE EXPERT TESTIMONY OF SARAH
BUTLER**

[Dkt. Nos. 185, 186, 189]

Presently before the court are: (1) Plaintiffs Homeland Housewares, LLC, and Nutribullet, LLC (collectively "Plaintiffs" or "Homeland")'s Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Plaintiffs' False Advertising Claim; (2) Plaintiffs' Motion to Exclude the Expert Testimony of Sarah Butler; and (3) Defendant SharkNinja Operating LLC ("SharkNinja")'s Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment. (Dkt. Nos. 185, 189, 186). After considering the parties' submissions and hearing oral argument, the court enters the following Order.

1 **I. BACKGROUND**

2 The court has set forth the relevant background in several
3 previous Orders. (See Dkts. 33, 39, 46, 69.) In brief, Homeland and
4 SharkNinja are competitors in the home blender market. (Decl.
5 Kaitlyn Hebert in support of Def.'s Mot. Summ. J. ("Def. Mot."),
6 ¶3.) Primarily at issue in this case is a comparison chart printed
7 on the packaging for SharkNinja's NutriNinja Pro ("BL450") product.
8 (Wilton Decl., Exs. 5 & 6.) The chart in question, labeled "NUTRI
9 NINJA vs. NUTRIBULLET," compares the products along various
10 criteria including wattage, speed, portability, and other features.
11 (Id.) Notably, the chart does not specify whether it is comparing
12 the BL450 to a particular Nutribullet model or all Nutribullet
13 products.

14 According to Homeland, the chart constitutes false advertising
15 that is entirely inaccurate as to the higher end NutriBullet Pro
16 ("NB 900") and largely inaccurate as to the NutriBullet Classic
17 ("NB 600"). This court previously granted a preliminary injunction
18 requiring SharkNinja to remove the allegedly infringing statements
19 from the BL450 box. (Dkt. 33 at 17-18.) Homeland now brings a
20 motion for summary judgment, and in the alternative, for summary
21 adjudication, of its false advertising claims against SharkNinja.
22 Homeland also moves to exclude the testimony of SharkNinja's expert
23 Sarah Butler who has conducted a survey on certain aspects of how
24 consumers interpret the BL450's packaging. SharkNinja has moved for
25 summary judgment, and in the alternative, for summary adjudication,
26 on all claims.

1 II. LEGAL STANDARD

2 Summary judgment is appropriate where the pleadings,
3 depositions, answers to interrogatories, and admissions on file,
4 together with the affidavits, if any, show "that there is no
5 genuine dispute as to any material fact and the movant is entitled
6 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
7 seeking summary judgment bears the initial burden of informing the
8 court of the basis for its motion and of identifying those portions
9 of the pleadings and discovery responses that demonstrate the
10 absence of a genuine issue of material fact. See Celotex Corp. v.
11 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
12 the evidence must be drawn in favor of the nonmoving party. See
13 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the
14 moving party does not bear the burden of proof at trial, it is
15 entitled to summary judgment if it can demonstrate that "there is
16 an absence of evidence to support the nonmoving party's case."
17 Celotex, 477 U.S. at 323.

18 Once the moving party meets its burden, the burden shifts to
19 the nonmoving party opposing the motion, who must "set forth
20 specific facts showing that there is a genuine issue for trial."
21 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
22 party "fails to make a showing sufficient to establish the
23 existence of an element essential to that party's case, and on
24 which that party will bear the burden of proof at trial." Celotex,
25 477 U.S. at 322. A genuine issue exists if "the evidence is such
26 that a reasonable jury could return a verdict for the nonmoving
27 party," and material facts are those "that might affect the outcome
28 of the suit under the governing law." Anderson, 477 U.S. at 248.

1 There is no genuine issue of fact "[w]here the record taken as a
2 whole could not lead a rational trier of fact to find for the
3 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio
4 Corp., 475 U.S. 574, 587 (1986).

5 It is not the court's task "to scour the record in search of a
6 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,
7 1278 (9th Cir. 1996). Counsel has an obligation to lay out their
8 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d
9 1026, 1031 (9th Cir. 2001). The court "need not examine the entire
10 file for evidence establishing a genuine issue of fact, where the
11 evidence is not set forth in the opposition papers with adequate
12 references so that it could conveniently be found." Id.

13 **III. DISCUSSION**

14 **A. Daubert Motion and Summary Judgment Claims**

15 Plaintiff moves to exclude the testimony of Defendant's expert
16 Sarah Butler under Federal Rule of Evidence 702 and Daubert v.
17 Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). Having reviewed the
18 expert report and considered the parties' arguments, the court
19 DENIES the motion. Furthermore, both parties seek summary judgment,
20 or in the alternative, summary adjudication on the false
21 advertising claim arising under Lanham Act section 43. Defendant
22 also seeks summary judgment on Homeland's state law claims for
23 unfair competition, false advertising, and trade libel. Having
24 considered the admissible record evidence, the court finds there
25 are triable issues of fact and DENIES summary judgment on all
26 claims.

1 **B. Plaintiff Homeland Houseware's Standing**

2 Pursuant to the Supreme Court's decision in Lexmark Intern. v.
3 Static Control Components, 134 S. Ct. 1377 (2013), a party seeking
4 to establish standing to recover under Section 43(a) of the Lanham
5 Act must meet the minimum requirements of Article III
6 standing-injury, causation, and redressability-and must also "plead
7 (and ultimately prove) an injury to a commercial interest in sales
8 or business reputation proximately caused by the defendants
9 misrepresentations." Id. at 1395. The requirement that a plaintiff
10 allege "injury to a commercial interest in reputation or sales"
11 exists to ensure that their claims come within the zone of
12 interests protected by the statute. Id. at 1390. While a plaintiff
13 may initially rely on allegations to meet the standing, they
14 "cannot obtain relief without *evidence* of injury." Id. at 1395.

15 SharkNinja contends that Homeland Housewares LLC lacks
16 standing and must be dismissed from the action. (Def. Mot. 24.)
17 Specifically, SharkNinja argues that Homeland Housewares lacks a
18 personal stake in the outcome of the lawsuit and cannot show sales
19 or reputational injury. (Id.) In support, SharkNinja notes that
20 Homeland Housewares admits it has never manufactured, marketed, or
21 sold any of the products at issue in this case. (Price Decl., Ex.
22 27 (Sapire Depo.), 14:3-15:2, 20:2-16, 22:20-22.) While Homeland
23 Housewares did own intellectual property in the Nutribullet
24 trademark, SharkNinja also asserts that the mark was assigned to
25 non-party CapBran Holdings, LLC in September 2015. (Def. Mot. 24.)

26 Plaintiffs respond that Homeland Housewares has adequately
27 alleged reputational injury to meet the Lexmark requirements. In
28 Plaintiffs' view, SharkNinja's allegedly false advertising damages

1 the reputation of Homeland products in the mind of consumers and
2 retail buyers. (Pl. Opp'n 22-23.) Even if Homeland did not
3 manufacture the disparaged products, it still suffers reputational
4 injury because of its association with the product. In support,
5 Plaintiffs rely on Lexmark's teaching that "when a defendant harms
6 a plaintiff's reputation by casting aspersions on its business, the
7 plaintiff's injury flows directly from the audience's belief in the
8 disparaging statements." Lexmark, 134 S. Ct. 1393. While Plaintiffs
9 concede that Homeland Housewares assigned its trademark rights in
10 2015 to a non-party, it contends that assignment is irrelevant for
11 purposes of standing, which "'is determined by the facts that exist
12 at the time the complaint is filed.'" (Pl. Opp'n 24 (quoting Clark
13 v. City of Lakewood, 259 F.3d 996, 1006 (9th Cir. 2001)).)
14 Plaintiffs also state that Homeland Housewares retained the right
15 to prosecute claims on the non-party's behalf. (Pl. Opp'n 24.)
16 Defendants contest this assertion because they read the original
17 assignment as also transferring the right to sue. (Def. Reply 22
18 (citing Wilton Decl., Ex. 20).)

19 At this juncture, the court concludes that Homeland has
20 adequately alleged facts regarding injury to its reputation to meet
21 Lexmark's standing inquiry. Contrary to SharkNinja's argument,
22 Homeland Housewares does not assert injury solely on the grounds
23 that they are a "sister corporation" of Nutribullet. Rather, the
24 claim is grounded in allegations that it was the owner of the
25 relevant trademark at the time the suit was initiated and that it
26 was the company that invested money into building the BULLET
27 blenders brand. (See First Amended Complaint ¶ 4.) If at trial,
28 SharkNinja is able to substantiate its argument that Homeland

1 Housewares suffered no injury, it might then preclude Homeland
2 Housewares from recovering, but dismissing Homeland Housewares at
3 this stage is unwarranted.

4 **IV. CONCLUSION**

5 For the reasons state above the Cross-Motions for Summary
6 Judgement, or, in the Alternative, Summary Adjudication and the
7 Motion to Exclude the Expert Testimony of Sarah Butler are all
8 DENIED.

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10 IT IS SO ORDERED.

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13 Dated: August 2, 2016


DEAN D. PREGERSON
United States District Judge