Shenzfiett Gooloo E-Commerce Co. v. Pilot, Inc.

United States District Court for the Central District of California

November 22, 2021, Decided; November 22, 2021, Filed

2:21-cv-08915-RGK-E

Reporter
2021 U.S. Dist. LEXIS 225300 *; 2021 WL 6751988

Shenzfiett Gooloo E-Commerce Co., Ltd. v. Pilot, Inc.

Core Terms

products, Amazon, infringing, delisted, starter, jump, patent, irreparable harm, asserts, sales, preliminary injunction, license agreement

Counsel: [*1] Attorneys for Plaintiff: Not Present.

Attorneys for Defendant: Not Present.

Judges: R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE.

Opinion by: R. GARY KLAUSNER

Opinion

CIVIL MINUTES - GENERAL

Proceedings: (IN CHAMBERS) Order Re: Plaintiffs Application for Temporary Restraining Order [DE 14]

I. INTRODUCTION

On November 12, 2021, Shenzhen Gooloo E-Commerce Co. ("Plaintiff") filed a complaint against Pilot Automotive, Inc. ("Defendant"), requesting a declaration that it does not infringe on Defendant's patent and that Defendant's patent is invalid, and alleging various state-law tort claims. On November 17, 2021, Plaintiff filed the instant Application for Temporary Restraining Order ("TRO Application").

For the reasons sets forth below, the Court **DENIES** Plaintiffs TRO Application.

II. FACTUAL BACKGROUND

Plaintiff is an online retailer that earns nearly 80% of its total sales revenue from Amazon.com. (Zhou Decl. ¶ 5, ECF No. 14-40.) Plaintiffs products are primarily electric jump starters and power stations that are manufactured by a third party, Shenzhen Carku Technology Co. (*Id.* ¶ 6.) Defendant sells numerous products, including automotive accessories such as lithium car jump starters. (Def.'s Opp. to TRO App. 5, ECF No. [*2] 18.) Defendant owns numerous patents, including U.S. Patent No. 10,046,653 ("the '653 Patent"), which describes a "novel automobile charger." (Kirtley Decl., Ex. A, at 170, ECF No. 14-21.)

Defendant has a history of aggressively defending its patent portfolio. At issue in this TRO Application is Defendant's use of Amazon.com's patent-enforcement system, known as Amazon Utility Patent Neutral Evaluation ("UPNE"). (Zhou Decl. ¶ 8.) An Amazon

seller may submit a patent infringement complaint via UPNE, whereupon Amazon will review the complaint and then usually urge the parties to come to a mutually beneficial resolution. If the parties are not able to reach a resolution, Amazon may choose to remove the allegedly infringing products from its online store. (Wan Decl., Ex. 6, ECF No. 14-10.) While UPNE evaluators generally do not consider a patent's validity, they do determine whether the patent owner is "likely to prove" that the accused products infringe upon the asserted claim. (*Id.*)

In June 2020, Defendant initiated a challenge under the UPNE system, alleging that some of Plaintiff's products infringed upon the '653 Patent's claims. (Wan Decl., Ex. 7 at 67, ECF No. 14-11.) In October 2020, the UPNE evaluator found that Defendant was "likely [*3] . . . able to prove" that the accused products infringed upon the '653 Patent. (Wan Decl., Ex. 8, ECF No. 14-11.) After Amazon delisted the accused products. Plaintiff and Defendant entered into a settlement and licensing agreement, which resulted in Amazon re-listing Plaintiffs products. (Zhou Decl. ¶ 12.) As part of the licensing agreement, Plaintiff was obligated to timely and accurately report its jump starter sales to Defendant. (Def.'s Opp. to TRO App. at 6.)

The parties disagree on the events that occurred after they entered into the licensing agreement. Plaintiff asserts that its manufacturer redesigned the circuitry and source code of its jump starters so that they would not infringe upon the '653 Patent. (Zhou Decl. ¶ 13.) Plaintiff then sold some of its allegedly non-infringing products under the same Amazon Standard Identification Numbers ("ASIN") as its infringing products in order to preserve its reviews and ratings. (*Id.* ¶ 14.) Plaintiff asserts that it alerted Defendant that the majority of its sales from Q3 2021 onward would be from the redesigned products, and that it provided Defendant with a list of the ASINs used to sell those products. (Wan Decl., Ex. 12 at 83, ECF No. 14-16.) Defendant, [*4] on the other hand, asserts that Plaintiff was consistently underreporting its jump starter product sales, which was a material breach of the parties' licensing agreement. (Def.'s Opp. to TRO App., at 6.) Defendant, focusing on the fact that Plaintiff admittedly sells its non-infringing products under some of the same ASINs as its infringing products, believes that Plaintiffs sales are not limited to the non-infringing products, but also include products covered by the licensing agreement (*Id.* at 8.)

After the parties were unable to resolve then dispute. Defendant submitted a second challenge under UPNE on September 14, 2021, requesting that Amazon once again delist the allegedly infringing products. (Wan Decl., Ex. 13, ECF No. 14-17.) Plaintiff asserts that Amazon immediately delisted the accused products, including ASIN B07BLM981K (the "GP2000 jump starter") and ASIN B07QDXL1PW (the "GP4000 jump starter"). (Zhou Decl. ¶¶ 17-18.) In response. Plaintiff sent five appeals to Amazon: four in September and one in November. Each was summarily denied. (*Id.* ¶ 19.)

III. JUDICIAL STANDARD

While a preliminary injunction is intended to preserve the status quo pending a judgment on the merits, a [*5] TRO is intended to preserve the status quo only until a preliminary injunction hearing can be held. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp., 174 F.3d 411, 422 (4th Cir. 1999)* (citing *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty., 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974)*). "Consequently. [TROs] are of limited duration, not—like preliminary injunctions—of indefinite duration." *Id.*

Despite this difference, the standard for a TRO is

"substantially identical" to the standard for a preliminary injunction. *See* Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a TRO or a preliminary injunction, the moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest. Winter v. Natural Res. Def Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). The court may also apply a sliding scale test, in which the elements of the Winter test are balanced "so that a stronger showing of one element may offset a weaker showing of another." All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Even under the sliding scale test, however, a plaintiff must demonstrate imminent irreparable ha; a court must not issue a TRO without such a showing. Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1376 (9th Cir. 1985). The moving party has the burden of persuasion. Hill v. McDonough, 547 U.S. 573, 584, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006).

IV. DISCUSSION

Plaintiff seeks a TRO ordering Defendant to withdraw its September 14, 2021 UPNE challenge, thus allowing Plaintiff to continue [*6] selling its products until the Coiut can hold a preliminary injunction healing. Because Plaintiff has not demonstrated imminent irreparable harm prior to such a hearing, the Court **DENIES** the TRO Application.[1]

Plaintiff argues that Defendant's actions have caused it to lose half of its revenue. As a result, it may be forced to lay off half of its workforce and faces the possibility that Amazon might "completely shut down Gooloo's storefronts," resulting in the company going out of business. (TRO App., at 16, ECF No. 14.) Plaintiff further asserts that an inability to sell its best-selling products during the holidays will only worsen its financial outlook. (*Id.* at 17.) Finally, Plaintiff argues that it faces a loss of consumer goodwill if its products continue to be delisted, as a delisted product rapidly falls in the Amazon rankings and results in fewer page views for the seller. (*Id.*)

Loss of business and diversion of potential customers may be irreparable harm. *See, e.g.*. Am. Trucking Ass 'n, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009); Beyond Blond Prods. LLC v. Heldman, 479 F. Supp. 3d 847, 888 (CD. Cal. 2021). Past lost sales, however, are a quintessential example of harm that may be remedied legally, via an award of money damages. L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1202 (9th Cir. 1980) (holding that economic harm is not normally irreparable). While Plaintiff argues that [*7] the delisting could ultimately destroy its business. Plaintiffs irreparable harm argument faces a critical problem: it does not appear that its "flagship" products have actually been removed from Amazon's website. Plaintiff asserts that the GP2000 and GP4000, "top seller[s] [and] Flagship produces] . . . were delisted," and that sales have never recovered "since the two Flagship Products remain delisted." (Zhou Decl. ¶¶ 17-18, 20.) As Defendant notes, however, these products, along with many others, remain available for purchase on Amazon. Indeed, as of November 19, 2021, the GP 4000 was Amazon's tenth best-selling jump starter, and the GP2000 was the twenty-seventh best-selling jump starter. *See* https://www.amazon.com/gp/bestsellers/automotive/318

[1] Because a party may not obtain a TRO without showing imminent irreparable harm, the Coiut does not analyze the remaining Winter factors.

336011 (last visited November 19, 2021).[2]

Further, while Plaintiff provides an email from Amazon noting that certain products may be removed from Amazon's warehouse on December 12, the same email notes that Plaintiff may delay the product's removal for at least 30 days pending an appeal or an attempt to remedy the issue. (Zhou Decl., Ex. D at 35, ECF No. 14-44.) Given that Plaintiffs "flagship products" remain listed for [*8] sale on Amazon, and that Plaintiff may delay any removal of these products from Amazon's warehouses until at least January 14, 2022 (after the holiday season), the Court finds that any future harm is not imminent. To the extent any product delisting has caused Plaintiff to lose revenue, Plaintiff may recover that lost revenue as damages should it prevail in this action.

Finally. Plaintiff first learned that its products faced delisting on September 14. (Zhou Decl. 17-18.) Despite having its appeals to Amazon rejected at least four times in the month of September, it nonetheless waited more than a month and a half to bring this TRO Application. Such a delay adds additional weight against an argument that Plaintiff faces imminent irreparable harm. *See* *Miller ex rel. NLRB v. Cat Pac. Med. Ctr., 991 F.2d 536, 544 (9th Cir. 1993)* (holding that, while delay in seeking TRO is not dispositive, a delay "before seeking [injunctive relief] implies a lack of urgency and irreparable harm").

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs TRO Application.

IT IS SO ORDERED.

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[2] Defendant failed to request judicial notice of this information, but the Court has the power to grant judicial notice *sua sponte*. *Fed. R. Evid. 201(c)(1)*. Courts may take judicial notice of publicly available websites. *See, e.g.*, *Wible v. Aetna Life Ins. Co., 375 F. Supp.2d 956, 965 (CD. Cal. 2005)* (granting judicial notice over two Amazon.com pages).