

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION



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VANDOR GROUP, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:23-cv-00013-MPB-MG
)	
BATESVILLE CASKET COMPANY, LLC., and)	
BATESVILLE SERVICES, LLC,)	
)	
Defendants.)	

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Plaintiff Vandor Group, Inc.'s, Motion for a Preliminary Injunction. (Docket No. 26). Vandor alleges that Batesville Casket Company, LLC, and Batesville Services, LLC (collectively, "Batesville"), infringed Vandor's patents for casket rental inserts. Vandor moves for this Court to enjoin Batesville from continuing to make and sell its inserts. Neither Plaintiff nor Defendants requested a hearing to offer any evidence either in support or opposition to the motion. (Docket No. 40). For the reasons detailed below, Vandor's Motion for Preliminary Injunction is **DENIED**.

I. BACKGROUND

A. Vandor's Complaint and Motion for Preliminary Injunction

Vandor's Amended Complaint (Docket No. 11) alleges that Batesville infringed upon three of Vandor's patents by producing and selling a product Vandor refers to as the "B-Insert." (*Id.* at ECF p. 4). Vandor has held the three patents at issue since 2015, 2017, and 2018 respectively, and has sold products incorporating the patent's claims since 2006. (*Id.* at ECF pp. 2-3; Docket No. 27, Pl.'s Br. at ECF p. 8).

Vandor's memorandum supporting its motion for a preliminary injunction alleges that Batesville's infringement caused it to suffer irreparable harm. (Pl.'s Br. at ECF p. 15).

Specifically, Vandor alleges that it would like to build more regional distribution centers to remedy product shipment challenges and argues it would likely be able to have more of these centers were it not for profit losses caused by Batesville's infringement. (*Id.* at ECF p. 15).

Vandor also states that its chance to fund its business expansion free of infringement is limited because its patents are due to expire in three years. (*Id.*). Vandor lastly states that, without an injunction, it would continue to suffer loss of good will, loss of prospective business "on other fronts," and loss of market share due to the direct competition. (*Id.* at ECF pp. 11–12).

Vandor also alleges that it will likely prove its infringement case and prevail on the merits, that harm to it outweighs harm to Batesville, and that a preliminary injunction advances the public interest. (*Id.* at ECF p. 11–17). Vandor finally alleges that it did not know Batesville was selling the infringing products until September 2022. (*Id.* at ECF p. 9).

B. Defendant's Response

In its response, Batesville alleges that Vandor knew about Batesville's competing product for at least nine years, pointing to a 2013 advertisement in which Vandor stated it "suppl[ies] Rental Inserts to match Batesville . . . Inserts." (Docket No. 42, Defs.' Resp. at ECF p. 10; Docket No. 42-2 at ECF p. 7). Further, Batesville argues that Vandor cannot meet any of the factors required for a preliminary injunction. (Defs.' Resp. at ECF p. 11). Particularly, Batesville alleges that Vandor has not sustained nor will it sustain irreparable harm. (*Id.* at ECF p. 12).

II. PRELIMINARY INJUNCTION STANDARD

In a patent case, courts "review the grant or denial of a preliminary injunction using the law of the regional circuit, here the Seventh Circuit." *Metalcraft of Mayville, Inc. v. The Toro*

Co., 848 F.3d 1358, 1363 (Fed. Cir. 2017). However, "Federal Circuit law governs issues of substantive patent law." *Medicines Co. v. Mylan Inc.*, 936 F. Supp. 2d 894, 899 (N.D. Ill. 2013); *see also Abbott Lab'ys v. Andrx Pharms., Inc.*, 241 F.R.D. 480, 488 (N.D. Ill. 2007) ("[I]n patent cases the law of the Federal Circuit applies to issues, both substantive and procedural, that implicate issues of substantive patent law.").

Under Federal Circuit law, a court must consider four factors to determine whether a preliminary injunction is merited: (1) the movant's reasonable likelihood of success on the merits; (2) the irreparable harm the movant will suffer if preliminary relief is not granted; (3) the balance of hardships tipping in its favor; and (4) the adverse impact on the public interest. *Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1555 (Fed. Cir. 1994); *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 973 (Fed. Cir. 1996). "Although the factors are not applied mechanically, a movant must establish the existence of both of the first two factors to be entitled to a preliminary injunction," *Altana Pharma AG v. Teva Pharms. USA, Inc.*, 566 F.3d 999, 1005 (Fed. Cir. 2009), and a court issuing a denial "need not make findings concerning the third and fourth factors if the moving party fails to establish either of the first two factors." *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 973–74 (Fed. Cir. 1996); *see also* *Reebok*, 32 F.3d at 1556 ("[W]e specifically decline today to require a district court to articulate findings on the third and fourth factors when the court denies a preliminary injunction because a party fails to establish either of the two critical factors.").

III. ANALYSIS

Irreparable harm and likelihood of success on the merits "are the most critical [factors] in a patent case, and a court must deny a motion for a preliminary injunction if 'a party fails to establish *either* of the two critical factors.'" *Pressure Specialist, Inc. v. Next Gen Mfg. Inc.*, 469

F. Supp. 3d 863, 868 (N.D. Ill. 2020) (quoting *Reebok*, 32 F.3d at 1556)). A party seeking a preliminary injunction must establish that it is likely to suffer irreparable harm if the preliminary injunction is not granted and that there is a causal nexus between the alleged infringement and the alleged harm. *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1368 (Fed. Cir. 2017).

Irreparable harm is presumed when a plaintiff makes a clear showing of both patent validity and infringement, two concepts that make up the first critical factor of likelihood of success on the merits. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001). "The presumption of irreparable harm acts 'as a procedural device which places the ultimate burden of production on the question of irreparable harm onto the alleged infringer.'" *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 974 (Fed. Cir. 1996) (quoting *Reebok*, 32 F.3d at 1556)). The alleged infringer may rebut the presumption by "bring[ing] forward evidence that irreparable injury would not actually be suffered by the patentee if the motion for preliminary injunction were denied." *Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1272 (Fed. Cir. 1985).

The Federal Circuit has held that when denying a motion for preliminary injunction based on a lack of irreparable harm, a district court may decline "to make findings on likelihood of success" and instead "may find that, even giving movant the benefit of the presumption of irreparable harm, the non-moving party has presented evidence sufficient to rebut the presumption." *Reebok*, 32 F.3d at 1557. *See also BRK Brands, Inc. v. Nest Labs, Inc.*, 28 F. Supp. 3d 765, 770 (N.D. Ill. 2014) (finding court did not need to make an assessment on likelihood of plaintiff prevailing where convinced the plaintiff had failed to demonstrate it would incur any irreparable harm if the injunction was denied).

Courts have not found "the simple recitation of potential economic injuries like the loss of sales, market share and profits" to signify irreparable harm without more evidence. *Eli Lilly & Co. v. Am. Cyanamid Co.*, 896 F. Supp. 851, 860 (S.D. Ind. 1995). To hold otherwise, "would require a finding of irreparable harm to every manufacturer/patentee, regardless of circumstances." *Id.* (quoting *Illinois Tool Works, Inc. v. Grip-Pak, Inc.*, 906 F.2d 679, 683 (Fed. Cir. 1990)). Conclusory affidavits asserting irreparable harm from an infringer's competition without accompanying evidence of market share or sales loss are "insufficient to justify injunctive relief." *McDavid Knee Guard, Inc. v. Nike USA, Inc.*, 683 F. Supp. 2d 740, 749 (N.D. Ill. 2010). However, providing evidence for claims of "price erosion, loss of goodwill, damage to reputation, and loss of business opportunit[y]" with unrebutted expert witnesses, specific financial records, and evidence about consumer choices and sensitive markets will create "valid grounds for finding irreparable harm." *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012); *see also Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1324 (Fed. Cir. 2012) (survey evidence on consumer decision-making provided by both parties supported finding no irreparable harm).

Here, to succeed on its preliminary injunction motion, Vandor would need to prove likelihood of success on the merits and likely irreparable harm if the motion is not granted. Since the Court declines to reach the likelihood of success factor, the Court gives Vandor the "benefit of the presumption of irreparable harm" as instructed by the Federal Circuit. *Reebok Int'l Ltd.* 32 F.3d at 1557. This passes the burden of production to Batesville, which must refute the presumption with evidence that Vandor will not suffer irreparable harm if the motion is denied. *Roper Corp. v. Litton Sys., Inc.*, 757 F.2d 1266, 1272 (Fed. Cir. 1985).

The Defendants argue that Vandor's allegation that Batesville is responsible for its failure to open additional distribution centers is vague, speculative, and at best posits potential economic injuries. (Defs.' Resp. at ECF p. 14.). Batesville also argues that Vandor's statements about loss of good will, prospective business on other fronts and loss market share are conclusory and that Vandor would need to show specific examples of harm that it fails to provide. (*Id.* at ECF p. 16). On these points, Batesville is correct.

Vandor argues that its irreparable harm comes from its lost opportunity to build regional distribution centers, which it alleges not only affected sales, but also its ability to "penetrate markets for its other funeral products." (Docket No. 44 at ECF p. 21). Vandor submitted a Declaration from its CEO, Alan Elder, stating that Batesville's product has caused Vandor economic and irreparable harm. (Docket No. 27-1, Elder Decl. at ECF p. 3). However, Elder did not explain why the harm is irreparable beyond stating that Vandor wishes to expand its distribution network and that it believes "additional regional distribution centers would be financially justifiable, were it not for the substantial lost revenue due to Batesville's infringement." (*Id.* at ECF p. 4). Unlike *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, where the plaintiffs offered expert witness testimony, financial records, and evidence about the market, Vandor does not offer any evidence beyond its own speculation. 664 F.3d at 930. Additionally, Vandor does not offer evidence to support its claim that it has and will continue to suffer loss of good will, prospective business on other fronts, and loss of market share. Thus, Vandor's claims are a "simple recitation of potential economic injuries" and do not merit a finding of irreparable harm. *Eli Lilly & Co*, 896 F. Supp. at 860.

Vandor also argues that because its "Patents-in-Suit are due to expire in a little over three years, Vandor's window of opportunity to fund its expansion based on the sales and profitability

of the Rental Insert is rapidly closing." (Pl.'s Br. at ECF p. 15). As Batesville correctly points out, (Defs.' Resp. at ECF p. 17), the Federal Circuit has concluded that the limited duration of a patent alone does not weigh in favor of finding irreparable harm. *Eli Lilly & Co.*, 896 F. Supp. at 860 (citing *Reebok*, 32 F.3d at 1558–59) (where a plaintiff argued that the "limited duration of a patent weighs in favor of a finding of irreparability," the Court disagreed and cited the Federal Circuit for the conclusion that if this argument was correct, it "would be tantamount to an automatic finding of irreparable harm every time a patentee alleged infringement.").

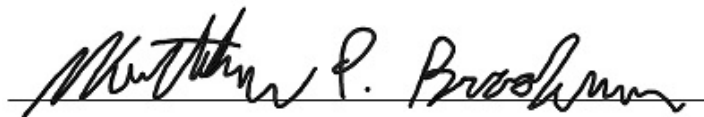
Thus, Batesville has refuted the presumption of irreparable harm by the denial of Vandor's preliminary injunction motion. Because the Court must deny a preliminary injunction motion when a party fails to establish either irreparable harm or likelihood of success on the merits, Vandor's motion for preliminary injunction fails. *Pressure Specialist, Inc.*, 469 F. Supp. 3d at 868 (quoting *Reebok*, 32 F.3d at 1556).

IV. CONCLUSION

Vandor's Motion for Preliminary Injunction (Docket No. 26) is **DENIED**.

IT IS SO ORDERED.

Date: October 27, 2023

A handwritten signature in black ink, reading "Matthew P. Brookman", written over a horizontal line.

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

Served electronically on all ECF-registered counsel of record.