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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STONE BREWING CO., LLC,
12 Plaintiff,
13 v.
14 MILLERCOORS LLC,
15 Defendant.
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Case No.: 3:18-cv-00331-BEN-MDD

**ORDER ON DEFENDANT'S
RENEWED MOTION FOR
JUDGMENT AS A MATTER OF
LAW, AFFIRMATIVE DEFENSES,
AND DECLARATORY JUDGMENT**

[ECF Nos. 620, 666]

17
18 **I. INTRODUCTION**

19 On March 25, 2022, a jury returned a verdict in favor of Plaintiff Stone Brewing
20 Co. LLC ("Stone") on its claim of trademark infringement. Before the jury's verdict,
21 Defendant MillerCoors LLC ("MillerCoors") filed a renewed motion for judgment as a
22 matter of law. ECF No. 620. Following the jury's verdict, MillerCoors filed a motion for
23 entry of judgment on affirmative defenses. ECF No. 666. The Court heard arguments
24 from the parties on these motions at a post-trial hearing held on June 17, 2022. ECF No.
25 695. The Court has considered the parties' briefs, oral arguments, and has reviewed the
26 record of trial and concludes that judgment as a matter of law is not warranted and
27 MillerCoors failed to prove its affirmative defenses. Accordingly, MillerCoors' motions
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1 for judgment as a matter of law and judgment on affirmative defenses are denied.¹

2 **II. JUDGMENT AS A MATTER OF LAW UNDER FED.R.CIV.P. 50**

3 Defendant filed its motion for judgment as a matter of law before the jury's verdict
4 under Fed.R.Civ.P. 50(a). Under Fed.R.Civ.P. 50(b), "If the court does not grant a
5 motion for judgment as a matter of law made under Rule 50(a), the court is considered to
6 have submitted the action to the jury subject to the court's later deciding the legal
7 questions raised by the motion."

8 **A. Legal Standard**

9 Rule 50 requires a court to render judgment as a matter of law when a party has
10 been fully heard on an issue, and there is no legally sufficient evidentiary basis for a
11 reasonable jury to find for that party on that issue. *Reeves v. Sanderson Plumbing Prod.,*
12 *Inc.*, 530 U.S. 133, 135 (2000). The standard for judgment as a matter of law under Rule
13 50 mirrors the standard for summary judgment under Rule 56. *Id.* Thus, the court must
14 review all of the evidence in the record, *cf., e.g., Matsushita Elec. Industrial Co. v. Zenith*
15 *Radio Corp.*, 475 U.S. 574, 587 (1986), drawing all reasonable inferences in favor of the
16 nonmoving party, but making no credibility determinations or weighing any evidence,
17 *e.g., Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554–555 (1990). The latter functions,
18 along with the drawing of legitimate inferences from the facts, are for the jury, not the
19 court. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Thus, although the
20 court should review the record as a whole, it must disregard all evidence favorable to the
21 moving party that the jury is not required to believe. A jury's verdict must be upheld if it
22 is supported by substantial evidence, which is evidence adequate to support the jury's
23 conclusion, even if it is also possible to draw a contrary conclusion. *DSPT Int'l, Inc. v.*
24 *Nahum*, 624 F.3d 1213, 1218 (9th Cir. 2010).

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28 ¹ The parties' familiarity with the facts in this case obviates any need for a recitation in
this brief. Facts are only discussed to the extent needed to resolve the motions.

1 “[T]he court should give credence to the evidence favoring the nonmovant as well
 2 as that ‘evidence supporting the moving party that is uncontradicted and unimpeached, at
 3 least to the extent that that evidence comes from disinterested witnesses.’ *Reeves* at 151.
 4 Although taking a motion under submission and ruling on it after the jury returns a
 5 verdict is proper practice, *see* Fed.R.Civ.P. 50(b) advisory committee’s note, the court
 6 “may not substitute its view of the evidence for that of the jury.” *Winarto v. Toshiba Am.*
 7 *Elecs. Components, Inc.*, 274 F.3d 1276, 1283 (9th Cir. 2001) (quoting *Johnson v.*
 8 *Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222, 1227 (9th Cir. 2001)).

9 **B. Discussion**

10 MillerCoors focuses its motion on four key aspects: (1) there is no evidence
 11 MillerCoors acted willfully; (2) no reasonable jury could find a likelihood of consumer
 12 confusion; (3) no reasonable jury could find Stone was damaged by MillerCoors’s
 13 actions; and (4) no reasonable jury could find that Stone was the first to use the STONE
 14 mark. The jury found in favor of MillerCoors on the first point regarding willfulness, so
 15 it need not be addressed. The three remaining matters are addressed below.

16 1. Likelihood of Consumer Confusion

17 To prove trademark infringement under the Lanham Act, a plaintiff must
 18 demonstrate that: (1) it has a valid, legally protectable trademark and (2) the defendant’s
 19 use of the mark to identify the goods or services causes a likelihood of confusion.
 20 *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007). Here, the
 21 parties dispute whether Stone has met its burden of proving that MillerCoors’s use of the
 22 Plaintiff’s mark caused a likelihood of confusion.

23 “The likelihood of confusion is the central element of trademark infringement.”
 24 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1205 (9th Cir. 2000) (quoting *Official*
 25 *Airline Guides v. Goss*, 6 F.3d 1385, 1391 (9th Cir. 1993)). The Ninth Circuit’s
 26 likelihood of confusion analysis focuses on “whether a ‘reasonably prudent consumer’ in
 27 the marketplace is likely to be confused as to the origin of the good or service bearing
 28 one of the marks.” *Rearden LLC*, 683 F.3d at 1214 (quoting *Entrepreneur Media, Inc. v.*

1 *Smith*, 279 F.3d 1135, 1140 (9th Cir. 2002)). Courts in the Ninth Circuit typically apply
2 the eight factors set out in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979) to
3 determine whether a defendant's use of a mark or name creates a likelihood of confusion.
4 *See Rearden LLC*, 683 F.3d at 1199; *Lahoti v. Vericheck, Inc.*, 636 F.3d 501, 507 (9th
5 Cir. 2011); *GoTo.com*, 202 F.3d at 1205. Those factors are: (1) the strength of the mark;
6 (2) the proximity of the goods; (3) the similarity of the marks; (4) evidence of actual
7 confusion; (5) marketing channels used; (6) type of goods and the degree of care likely to
8 be exercised by the purchaser; (7) defendant's intent in selecting its mark; and (8)
9 likelihood of expansion into other markets. *Id.*; *Sleekcraft*, 599 F.2d at 348.

10 MillerCoors's argument for lack of confusion focuses on the *Sleekcraft* factors and,
11 after analyzing each, posits a reasonable jury could not have concluded that a reasonably
12 prudent consumer would be confused by refreshed Keystone Light packaging. This
13 Court agrees, and had it been in the position of fact-finder in this case, would have found
14 as such. But, that is not the standard binding this Court in a Rule 50 analysis. That this
15 Court disagrees with a jury's verdict is not enough to grant a Rule 50 motion, but rather it
16 is the "reasonable jury" standard. Looking at the evidence presented, a reasonable jury
17 could have reached the conclusion it did.

18 Stone presented evidence of the strength of the STONE mark in the form of brand
19 recognition and awards received by the brewery. 3/14 AM Tr. at 82:14-95:16; 3/14 PM
20 Tr. at 1:1-28:8. Regarding the proximity of the goods, both products are beer. While
21 MillerCoors rightly points out the beers make up very different segments of the beer
22 industry, the jury was entitled to conclude the goods were related by participating the
23 same general industry. The marks STONE and 'STONE are nearly identical. Regarding
24 evidence of actual confusion, the jury was entitled to rely on the evidence offered by
25 Stone to conclude there was actual confusion. This came in the form of social media
26 posts by Stone customers (PX 2468, 2473, 3001, 3015, 3492, and 5033), survey evidence
27 (PX 00071), and "brand association," "tagline," "spoken word," and "visual confusion"
28 studies (3/18 PM Tr. at 76:12-78:9; 79:15-80:6; 80:7-82:12; 91:2-93:1). Stone also

1 presented video evidence of potential consumers being asked to pick out “Stone Beer” on
2 a shelf with various beers, including Stone IPA and Keystone Light and the resulting
3 confusions therefrom. *Id.* at 83:4-85:19; 89:7-91:1. Stone’s expert also testified
4 regarding why those surveys were more reliable than those conducted by MillerCoors.
5 *Id.* at 82:3-12; 83:4-9; 97:19-100:11.

6 The above-mentioned evidence combined with the visual presentation of the
7 Keystone Light can to focus on the use of the word “STONE” in its marketing materials
8 could lead a reasonable jury to find a likelihood of confusion, and thus, trademark
9 infringement. The Court recognizes that Defendant presented strong evidence,
10 particularly testimony that showed the structural flaws with Plaintiff’s survey evidence.
11 DX 10131-D; 10131-F; 10132-H. The Court was similarly unconvinced by the evidence
12 proffered from Stone’s surveys, but that goes to the weight of the evidence. Presumably,
13 the jury found Stone’s survey evidence convincing enough to find a likelihood of
14 confusion. The Court will not second guess this determination.

15 2. Proof of Damages

16 MillerCoors argues that there is no proof of actual damages suffered in this case
17 because there is no evidence of actual confusion. MillerCoors points out that Stone’s
18 evidence is limited to anecdotal social media posts submitted after the lawsuit. Further,
19 MillerCoors focuses on Nielsen survey data in what were identified as “shifting reports.”
20 These reports indicate that any customers Keystone Light gained after its packaging
21 refresh did not come from Stone, and that any customers Stone Brewing lost after 2017
22 were not transitioning to Keystone. DX6534; 6537; 6575; 8491. MillerCoors further
23 argues the only evidence offered is evidence of trademark dilution, not trademark
24 infringement, and that since dilution was not a theory tried to the jury, Stone should not
25 be able to recover damages under that theory.

26 The Court finds Stone presented evidence to the jury that would allow them to
27 reasonably find that Stone suffered damages as a result trademark infringement. Stone
28 presented evidence that following MillerCoors’s refresh of the Keystone Light brand,



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