UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE COFFEE ANTITRUST LITIGATION.

CIVIL ACTION NO.: 14 MD 2542 (VSB) (SLC)

MEMORANDUM OPINION AND ORDER

SARAH L. CAVE, United States Magistrate Judge.

I. INTRODUCTION

Before the Court is Keurig's Motion to amend its initial answer under Federal Rule of Civil Procedure 15(a)(2) to add the defense of "release and covenant not to sue" (the "Release Defense") (the "Motion"). (ECF No. 965 at 2). TreeHouse Foods, Inc., Bay Valley Foods, LLC, and Sturm Foods Inc. ("TreeHouse"), along with McLane Company, Inc., JBR, Inc., and the Indirect Purchaser Plaintiffs oppose the Motion (collectively, "Plaintiffs"). (ECF Nos. 991, 994).

Having reviewed the parties' submissions and heard the parties' arguments during a telephone conference on June 11, 2020, for the reasons set forth below, the Motion is DENIED.

II. BACKGROUND

The Court assumes the readers' familiarity with the long history and facts in this case, and thus only repeats here what is necessary to understand the Motion.

A. Factual Background

In February 2013, TreeHouse and Keurig entered an agreement to settle a portion of a prior litigation between Keurig and Sturm Foods Inc., TreeHouse's predecessor, involving patent infringement, trademark, and other claims (the "Settlement Agreement"). (ECF No. 965 at 2).

After more than six years since this lawsuit was filed in 2014, and after two-and-a-half years of discovery, party fact discovery closed on May 20, 2020, third-party fact discovery is set to close on June 17, 2020, and expert discovery is set to close on February 22, 2021. (ECF No. 887).

B. Procedural Background

1. Negotiation of the case management order

In the Fall of 2016, the parties negotiated the initial case management schedule. The parties proposed competing language for the deadline to amend pleadings, and the case management schedule entered by the Court ultimately adopted Keurig's proposal, stating: "Without leave of the Court, no additional causes of action or defenses may be asserted more than thirty (30) days after Defendant's answers have been served. Thereafter, the parties will act in accordance with Federal Rule of Civil Procedure 15." (ECF No. 354-1 (the "2016 CMO"); ECF No. 991 at 11–12).

On January 16, 2018, Keurig filed its Answer to TreeHouse's Amended Complaint in this multi-district litigation (the "Original Answer"). (ECF No. 965 at 3). Keurig's Original Answer included the defenses of waiver and estoppel, but did not include the Release Defense. (Id.) Pursuant to the 2016 CMO, Keurig had thirty days to amend its answers without seeking leave of the Court. In that time, Keurig amended its answer to the JBR, Inc. complaint, but did not amend its Original Answer to the TreeHouse complaint. (Id.)

Keurig did not raise the Release Defense during the 2015 briefing on its motion to dismiss, did not raise it in its original disclosures in December 2017 or its amended disclosures in 2020,

did not disclose any witnesses in connection with this defense, and did not seek discovery in connection with the Release Defense. (ECF No. 991 at 7–10).

2. The Motion

Keurig alleges that it filed the Motion immediately after realizing that the Release Defense was "inadvertently removed from Keurig's original pleading," due to what Keurig alleges was essentially a typographical error in preparing its submission to the court. (ECF No. 965 at 2; ECF No. 1010 at 5). The Release Defense is based on Keurig's contention that the Settlement Agreement included a release and covenant not to sue with respect to some of the claims Plaintiffs assert in this action. (ECF No. 965 at 2–3).

Plaintiffs oppose the Motion on the grounds that it would prejudice the Plaintiffs, was brought in bad faith after undue delay, is futile, and does not represent "good cause" under Rule 16 to amend the 2016 CMO. (ECF No. 991). In particular, Plaintiffs contend that if the Motion is granted, "further document and deposition discovery would [be] needed concerning the [Settlement] Agreement and its scope[.]" (ECF No. 991 at 10).

III. DISCUSSION

A. Legal Standards

1. Rule 16

Federal Rule of Civil Procedure 16(b)(4) states that a court-ordered schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "[W]hen a scheduling order has been entered which has restricted a party's ability to file an amended complaint, Rule 15's liberal standard must be balanced against the more stringent standard of Rule 16, under which such an order 'may be modified only for good cause.'" Perfect Pearl Co.,

Inc. v. Majestic Pearl & Stone, Inc., 889 F. Supp. 2d 453, 457 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 16(b)(4)). Courts in this District have held that a party cannot establish good cause where "the proposed amendment rests on information that the party knew, or should have known" before the deadline to amend. Id. (internal citations omitted). In general, "[b]ecause compliance with Rule 16 is a threshold matter which may obviate the Rule 15 analysis, that issue [should be] addressed first." Id.; see Holmes v. Grubman, 568 F.3d 329, 334–35 (2d Cir. 2009) ("[T]he lenient standard under Rule 15(a) . . . must be balanced against the requirement under Rule 16(b) that the Court's scheduling order shall not be modified except upon a showing of good cause." (internal citations omitted)); Soroof Trading Dev. Co. v. GE Microgen, Inc., 283 F.R.D. 142, 147–48 (S.D.N.Y. 2012) (requiring motion to amend filed after court-ordered deadline to meet requirements of both Rule 15(a)(2) and Rule 16(b)(4)).

2. Rule 15

Federal Rule of Civil Procedure 15 provides that a court "should freely give leave" to amend a pleading "when justice so requires." Fed. R. Civ. P. 15(a)(2). The Rule encourages courts to determine claims "on the merits" rather than disposing of claims or defenses based on "mere technicalities." Monahan v. NYC Dep't of Corr., 214 F.3d 275, 283 (2d Cir. 2000) ("Rule [15] reflects two of the most important principles behind the Federal Rules: pleadings are to serve the limited role of providing the opposing party with notice of the claim or defense to be litigated, and 'mere technicalities' should not prevent cases from being decided on the merits.") (internal citations omitted).

The Second Circuit has explained that "district courts should not deny leave [to amend] unless there is a substantial reason to do so, such as excessive delay, prejudice to the opposing

party, or futility." Friedl v. City of New York, 210 F.3d 79, 87 (2d Cir. 2000). Courts in this District have held that denial of a motion to amend is appropriate where "(1) the movant is guilty of undue delay, (2) the movant has acted in bad faith, (3) the amendment would be futile, or (4) the amendment would prejudice the opposing party." Procter & Gamble Co. v. Hello Prod., LLC, No. 14 Civ. 649, 2015 WL 2408523, at *1 (S.D.N.Y. May 20, 2015) (citing State Teachers Retirement Bd. v. Fluor Corp., 654 F.2d 843, 856 (2d Cir. 1981)); see Williams v. Citigroup Inc., 659 F.3d 208, 213–14 (2d Cir. 2011) (per curiam) (reiterating Supreme Court precedent explaining proper grounds for denying a motion to amend as "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment[.]").

While a motion to amend under Rule 15(a)(2) may be made at any stage of the litigation, when "a proposed amendment is based on 'information that the party knew or should have known prior to the deadline to file an amendment, leave to amend is properly denied.'" Hyo Jung v. Chorus Music Studio, Inc., No. 13 Civ. 1494 (RLE), 2014 WL 4493795, at *2 (S.D.N.Y. Sept. 11, 2014) (citing Soroof Trading, 283 F.R.D. at 147); Procter & Gamble Co., 2015 WL 2408523, at *1–2 (finding undue delay and prejudice when party was aware of information well before deadline to amend pleadings but waited ten months to move to amend).

Prejudice occurs when an amendment would "(i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction." Soroof Trading, 283 F.R.D. at 147 (citing Block v. First Blood Assocs, 988 F.2d 344, 350 (2d Cir. 1993)).

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