UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOCUS PRODUCTS GROUP INTERNATIONAL, LLC, ZAHNER DESIGN GROUP LTD., HOOKLESS SYSTEMS OF NORTH AMERICA, INC., SURE FIT HOME PRODUCTS, LLC, SURE FIT HOME DÉCOR HOLDINGS CORP., *and* SF HOME D DÉCOR, LLC, Plaintiffs, -v- KARTRI SALES COMPANY, INC., *and* MARQUIS MILLS, INTERNATIONAL, INC., Defendants.	15 Civ. 10154 (PAE) (SDA) OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This decision resolves—and grants—a motion by the prevailing plaintiffs for an award of reasonable attorneys' fees in this litigation under the fee provisions of the Patent Act, 35 U.S.C. § 285, and the Lanham Act, 15 U.S.C. § 1117(a). The Court also grants plaintiffs' motions for awards of permissible costs, and pre- and post-judgment interest.

I. Background

The long and tangled history of this case is set out in detail across various opinions and orders in this case, including in the Court's 168-page bench trial decision, issued December 22, 2022, resolving the claims in the case not previously resolved on summary judgment. *See* Dkt. 501 ("Trial Decision"). The following brief overview is limited to the context necessary for the present motions.

A. Key Pretrial Events

Plaintiffs—to whom the Court collectively refers as "Focus"—manufacture, sell, and distribute distinctive "hookless" shower curtains. These have obtained considerable acclaim and

success in the hospitality industry for their ease of installation and replacement. In this litigation, Focus alleges that defendants Kartri Sales Company, Inc. ("Kartri"), and Marquis Mills, International, Inc. ("Marquis"), together manufactured, sold, and distributed confusingly similar shower curtains, and in so doing, unlawfully exploited Focus's intellectual property, in violation of federal and state law.

On June 30, 2015, Focus initiated this litigation. It came, in short order, to include claims of willful infringement of three utility patents and one design patent, in violation of the Patent Act; willful infringement of and unfair competition with two trademarks and trade dress, in violation of the Lanham Act; and unfair competition, in violation of New York law.

On July 14, 2016, in a bench ruling, the Court denied, in their entirety, motions to dismiss by both defendants. Dkt. 77.

On April 16, 2020, after a *Markman* hearing and long and contentious discovery, the Court resolved cross-motions for partial summary judgment. These resulted predominantly in (1) entry of summary judgment for plaintiffs on certain infringement claims under each of the three utility patents; and (2) dismissal of numerous counterclaims brought by Marquis. Dkt. 297; *see id.* at 31 (design patent not before Court).

On August 5, 2021, the Court resolved plaintiffs' motions *in limine* in a bench ruling. Dkt. 412. On November 23, 2021, the Court resolved defendants' motions *in limine* in a bench ruling. Dkt. 436.

B. The Bench Trial and Decision

On June 27–29 and July 26–28, 2022, the Court held a bench trial as to the remaining claims. On December 22, 2022, the Court issued a lengthy decision resolving the outstanding claims. Dkt. 501.

As to liability, the Court: (1) found both defendants liable for infringement of and unfair competition with plaintiffs' EZ-ON[1] trademark mark and trade dress under 15 U.S.C. § 1125(a), and for unfair competition with plaintiffs' EZ-ON mark and trade dress under New York law; (2) found Kartri liable for infringement of and unfair competition with plaintiffs' HOOKLESS mark under 15 U.S.C. § 1125(a) and for unfair competition with plaintiffs' HOOKLESS mark under New York law; (3) denied all of defendants' affirmative defenses; and (4) found defendants' infringement of the utility patents and trade dress to have been willful between February 27, 2015 and November 15, 2018.

As to damages, the Court (1) awarded plaintiffs lost profits, in the amount of $970,324, for defendants' infringement of the utility patents and trade dress, covering the period October 16, 2013, to November 15, 2018; the Court trebled the award for the period March 1, 2015 to November 15, 2018, resulting in a final, enhanced lost profits award of $2,783,687; (2) awarded plaintiffs a reasonable royalty of $53,907 for defendants' infringement of the utility patents and the trade dress, covering the period October 16, 2013 to November 15, 2018; the Court trebled the award for the period March 1, 2015 through November 15, 2018, resulting in a final, enhanced reasonable royalty award of $154,649; (3) enjoined both defendants from future infringements of, and unfair competition with, the EZ-ON mark and trade dress; and Kartri from the same as to the HOOKLESS mark; and (4) denied plaintiffs' claims for disgorgement of defendants' profits and a reasonable royalty for defendants' infringement of the EZ-ON mark.

The Court also set a schedule for the briefing of the issues of reasonable attorneys' fees, prejudgment interest, and post-judgment interest.

C. The Motions for a Fee Award, Prejudgment Interest, and Post-Judgment Interest

[1] As in its trial decision, the Court will refer to the mark as "EZ-ON." Trial Decision at 8 n.10.

On January 19, 2023, plaintiffs filed a memorandum of law in support of their motion for attorneys' fees, prejudgment interest, and post-judgment interest. Dkt. 505 ("Focus Mem."). In support, plaintiffs filed two sets of invoices, Dkt. 505-1; Dkt. 505-2; a spreadsheet summarizing these, Dkt. 505-3; and other materials, Dkts. 505-4–7. Plaintiffs sought a fee award of $1,549,544.91. On February 16, 2023, Kartri filed a memorandum of law in opposition, Dkt. 524 ("Kartri Mem."), with attached exhibits, Dkts. 524-1–4. On February 17, 2023, Marquis filed a brief memorandum of law in opposition, Dkt. 525 ("Marquis Mem."), with attached exhibits, Dkts. 525-1–2, that principally adopted Kartri's arguments. On March 2, 2023, Focus filed a reply, Dkt. 530 ("Focus Rep."), with attached exhibits, Dkts. 530-1–5, and a supplemental declaration, Dkt. 531.

II. The Motion for an Award of Fees and Costs

A. Governing Legal Principles

"Ordinarily, under the 'American Rule,' each party must bear its own attorneys' fees." *Benihana of Tokyo, LLC v. Benihana, Inc.*, No. 14 Civ. 224 (PAE), 2018 WL 3574864, at *5 (S.D.N.Y. July 25, 2018), *aff'd*, 771 F. App'x 71 (2d Cir. 2019) (summary order). "However, where there is 'explicit statutory authority,' courts may award attorneys' fees." *Id.* (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Hum. Res.*, 532 U.S. 598, 602–03 (2001)). In identical language, the Patent Act and Copyright Act each confer such authority, stating that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." *See* 35 U.S.C. § 285; 15 U.S.C. § 1117(a).

In *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545 (2014), the Supreme Court construed the Patent Act provision. The Second Circuit has since adopted that

construction as governing fee applications under the Lanham Act. *See Sleepy's LLC v. Select Comfort Wholesale Corp.*, 909 F.3d 519, 530–31 (2d Cir. 2018).

Under *Octane*, an "exceptional case" is "one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." 572 U.S. at 554. District courts have wide latitude to determine whether a case is exceptional; the inquiry is a case-by-case exercise that considers the totality of the circumstances. *Id.*

In applying this standard, courts may consider a nonexclusive list of factors including "frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Id.* at 554 n.6 (citing *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994)); *see Manhattan Rev. LLC v. Yun*, 765 F. App'x 574, 578 (2d Cir. 2019) (summary order) (district courts are "encourag[ed]" to apply "the *Fogerty* factors from the Copyright Act context" in exercising discretion as to fee requests under the Lanham Act).

Although highly relevant, fraud, bad faith, or willful infringement are no longer required for a fee award under the Lanham Act. *See 4 Pillar Dynasty LLC. v. N.Y. & Co.*, 933 F.3d 202, 215–16 (2d Cir. 2019) (precedents requiring a showing of willfulness have been overtaken by *Octane*). However, "although *Octane* reduced the showing required for an award on the ground of objective baselessness, courts continue to hold claims of baselessness to a high bar." *Small v. Implant Direct Mfg. LLC*, No. 06 Civ. 683 (NRB), 2014 WL 5463621, at *3 (S.D.N.Y. Oct. 23, 2014). As a result, "most post-*Octane* cases awarding fees continue to involve substantial litigation misconduct." *Hockeyline, Inc. v. STATS LLC,* No. 13 Civ. 1446

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