

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:22-CV-00148-FDW-DSC

SYCAMORE BREWING, LLC,

Plaintiff,

vs.

STONE BREWING CO., LLC,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff Sycamore Brewing, LLC's Motion for Temporary Restraining Order and Preliminary Injunction (the "**Motion**"), (Doc. No. 5), filed April 8, 2022. On April 11, 2022, the Court entered an Order denying Plaintiff's Motion to the extent it sought a Temporary Restraining Order and deferring on ruling to the extent it sought a Preliminary Injunction. On April 20, 2022, a hearing on the Motion took place before the undersigned. After reviewing the pleadings, exhibits thereto, and applicable law, and after hearing the evidence and arguments presented by counsel at the hearing, the Court finds Plaintiff is entitled to a preliminary injunction and GRANTS the Motion with modification as set forth below.

Findings of Fact

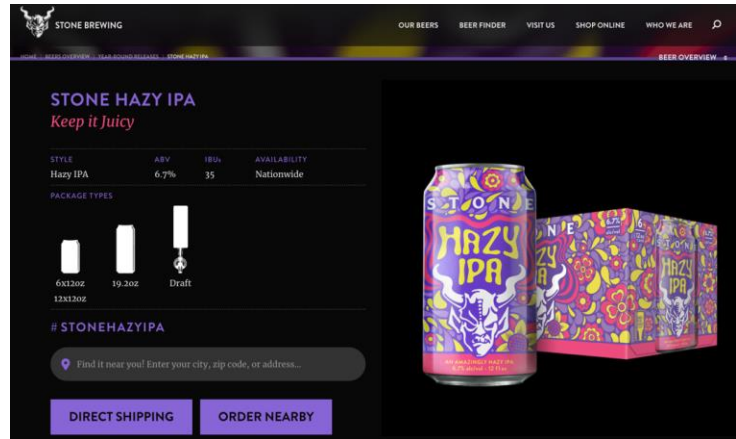
1. Plaintiff Sycamore Brewing, LLC ("**Plaintiff**") is a limited liability company founded in 2013 with its principal place of business in Charlotte, North Carolina. Plaintiff currently sells craft beer throughout North Carolina and across seven other states – South Carolina, Virginia, West Virginia, Tennessee, Ohio, Georgia, and Kentucky – and asserts it continues to expand its market.
2. Plaintiff's Juiciness IPA was introduced in 2019 and is currently sold throughout Plaintiff's

distribution area, in eight states.

3. In 2020, Plaintiff began marketing its Juiciness IPA with the slogan KEEP IT JUICY. The slogan is prominently printed on the retail packaging boxes that the beer is sold in:



4. Plaintiff owns the name and mark KEEP IT JUICY (U.S. Reg. No. 6,464,651) (the “**Mark**”) and has registered the mark on the Principal Register of the United States Patent and Trademark Office (the “**USPTO**”) in International Class 32 for “Beer; Beer, ale, and lager; Craft beer.” The USPTO registered the mark on August 24, 2021, with a date of first use of September 12, 2020.
5. Defendant Stone Brewing Co., LLC (“**Defendant**”) is a limited liability company founded in 1996 with its principal place of business in Escondido, California. As of 2022, Defendant is the ninth largest craft brewery in the United States and has distributed and sold beers in all fifty states since 2017.
6. In August 2021, Defendant launched its Hazy IPA.
7. In March 2022, after Plaintiff obtained registration of the Mark with the USPTO, Defendant changed the packaging for its Hazy IPA, adding “KEEP IT JUICY” to the bottom flap of its retail box.
8. Defendant now distributes its Hazy IPA in retail packaging boxes that prominently feature the Mark. Defendant also uses the Mark on the Hazy IPA page on its website. In addition, Defendant uses the Mark in video advertising for its Hazy IPA.



9. Defendant is using the Mark without Plaintiff's consent, approval, or authority.

Conclusions of Law

1. To obtain a preliminary injunction, Plaintiff must establish: “(1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm without the preliminary injunction; (3) the balance of equities tips in its favor; and (4) the injunction is in the public interest.” Mountain Valley Pipeline, LLC. V. W. Pocahontas Props. Ltd. P’ship, 918 F.3d 353, 366 (4th Cir. 2019) (citing Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (internal citations omitted).
2. The Court concludes, and neither party disputes, that it has jurisdiction over the parties and subject matter of this action.
3. The Court concludes that Plaintiff has shown a likelihood of success on the merits of its claims for (1) Trademark Infringement pursuant to 15 U.S.C. § 1114; (2) Unfair Competition pursuant

to 15 U.S.C. § 1125(a); and (3) Deceptive Trade Practices pursuant to N.C. Gen. Stat. § 75-1.1.

4. To establish Trademark Infringement, Plaintiff must show that (1) it has a valid trademark; (2) its mark can be protected; and (3) the defendant's use of an imitation is likely to cause consumer confusion. 15 U.S.C. § 1114(a); Synergistic Int'l, LLC v. Korman, 470 F.3d 162, 170 (4th Cir. 2006).
5. A certificate of registration is *prima facie* evidence of the validity of the mark, ownership by the registrant, and proper registration under the Lanham Act. Birttingham v. Jenkins, 914 F.2d 447, 452 (4th Cir. 1990) (citing 15 U.S.C. § 1057(b)); see 15 U.S.C. § 1115(a). Accordingly, the Mark is entitled to a presumption of validity, and Plaintiff is entitled to a presumption of ownership of the Mark. See Rebel Debutante LLC v. Forsythe Cosmetic Group, Ltd., 799 F. Supp. 2d 558, 568-69 (M.D.N.C. 2011). However, because KEEP IT JUICY was registered in 2021 and therefore has not been in continuous use for five consecutive years following registration, the Mark is not "conclusive" evidence and may be contested by Defendant. Id. (citing 15 U.S.C. §§ 1115(b) ("Incontestability"), 1065 ("Incontestability of right to sue mark under certain conditions")). In its response brief, Defendant contests the validity of the Mark. (Doc. No. 17, pp. 7-8). "In challenging the presumption, [Defendant] must introduce sufficient evidence, by a preponderance, to rebut the presumption of [Plaintiff's] right to exclusive use. Id. (citing Pizzeria Uno Corp. v. Temple, 747 F.2d 1522, 1529 & n.4 (4th Cir. 1984)). The Court concludes Defendant has failed to carry its burden of introducing sufficient evidence to rebut the presumption of validity and ownership of the Mark. Moreover, the Court concludes KEEP IT JUICY on its face appears to be at least suggestive, juxtaposing three words that connote, rather than describe, Plaintiff's Juiciness IPA and *together* are not typically associated

with craft beer. *Id.* (citing U.S. Search, LLC v. U.S. Search.com Inc., 300 F.3d 517, 523 (4th Cir. 2002)) (“Suggestive as well as arbitrary and fanciful marks are deemed inherently distinctive and receive the greatest amount of protection. A suggestive mark consists of words that connote, rather than describe, some quality or characteristic of a product or service.”). Accordingly, the Court finds the Mark, which the USPTO registered on August 24, 2021, is valid and can be protected.

6. The Fourth Circuit generally balances the following relevant factors to assess the likelihood of confusion among consumers: (1) strength/distinctiveness; (2) similarity of the marks; (3) similarity of the goods; (4) similarity of the facilities used; (5) similarity of advertising; (6) defendant’s intent; (7) actual confusion; (8) proximity of products as sold; (9) probability that plaintiff will enter defendant’s market; (10) quality of defendant’s product compared to plaintiff’s; and (11) the sophistication of potential buyers. Shakespeare Co. v. Silstar Corp. of Am., 110 F.3d 234, 241 (4th Cir. 1997). Here, nearly all the Shakespeare factors weigh in favor of granting a preliminary injunction. The Mark is distinctive in the craft beer context. The similarity of the marks is astounding, and the goods are not just similar, they are the same – a craft India Pale Ale. Both parties are already in the same market, at least within Plaintiff’s current distribution area of eight states in the Southeast, and utilize a network of wholesale distributors to access the retail beer markets attendant to chain retail, convenience and grocery stores, bottle shops, restaurants, and bars. In some retail locations, the two products are placed beside or above/below one another. Accordingly, the proximity of products as sold is again staggering. Moreover, the mark has been placed, as a prominent part of the packaging, on both the Juiciness IPA and Hazy IPA’s retail boxes. In addition, both parties advertise their beers on social media and the Internet. Further, Defendant does not dispute that the average

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