

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LUV N' CARE, LTD. and ADMAR	§	
INTERNATIONAL, INC.,	§	
	§	
<i>Plaintiffs, Counter-Defendants,</i>	§	
	§	Civil Action No. 2:10-cv-461-JRG
v.	§	
	§	
ROYAL KING INFANT PRODUCTS CO.	§	
LTD.,	§	
	§	
<i>Defendant, Counter-Plaintiff.</i>	§	
	§	

MEMORANDUM OPINION AND ORDER

Before the Court are the post-trial motions pending in this case relating to damages and remedies. Defendant Royal King Infant Products Co., Ltd. ("RK") filed a (1) Motion in the Alternative for a New Trial on Damages on Plaintiff's Count I for Breach of Contract (Or, At Least, Reducing the Damage Award) and (2) a Motion for a New Trial on Damages. (Dkt. No. 240.) Plaintiffs Luv n' Care Ltd. and Admar International, Inc. (collectively, "LNC" or "Plaintiffs") oppose RK's Motions. (Dkt. No. 251.) Also before the Court is LNC's Motion for Post-Verdict Damages (Dkt. No. 243), which RK opposes (Dkt. No. 252). The Court also takes up LNC's Motion for a Permanent Injunction (Dkt. No. 237), which RK opposes (Dkt. No. 238).

The Court previously denied RK's motion to amend (Dkt. No. 240) the Court's February 14, 2014 Memorandum Opinion and Order (Dkt. No. 234) regarding RK's equitable estoppel defense and fraudulent inducement claim. (Dkt. No. 282.) The Court has also, by prior order, separately addressed the parties' post-trial motions relating to liability (Dkt. No. 283). The Court turns now to the area of damages and remedies issues. For the reasons set forth below, the parties' motions relating to damages and remedies are **DENIED**.

I. BACKGROUND

A. Settlement Agreement

On June 22, 2009, the parties executed a settlement agreement (Dkt. No. 1-1, “Settlement Agreement”) to resolve a 2008 trademark case previously before this Court. (Dkt. No. 192.) Under the terms of the Settlement Agreement, RK would pay royalties on sales of certain products that RK made before the Settlement Agreement and would stop making the same:

1) Royal King shall pay a 12% royalty on all past sales of the products listed on the spreadsheet attached hereto as Exhibit A (hereinafter “the Products”). The total royalty for all U.S. and international sales is \$396,000 USD, based on Royal King’s representations as to the total US and international sales of the Products.

...

6) Royal King will immediately cease and desist worldwide from making, selling, offering to sell, marketing, and/or promoting the Products, including any versions of the Products or their packaging that are likely to cause confusion with LNC’s products or packaging. In the event that Royal King has any remaining Products in inventory, Royal King shall have 30 days from execution of this Settlement to sell-off any such remaining Products, shall report any sales beyond those paid for in this Agreement, and shall pay the 12% royalty on such sales. Any products, and the Molds for such products, remaining more than 30 days from execution of this Settlement shall be destroyed, and Royal King shall provide proof of same.

(Dkt. No. 1-1 (“Settlement Agreement”).) The terms of the Settlement Agreement also provided for a release of past and present claims relating to the products at issue:

5) LNC and Royal King agree that this is a global settlement of all past and present claims LNC had or has against Royal King with respect to the Products up through the date of the present Agreement, and that this settlement and the Products in this Agreement are not limited to the colors in the images below, or any particular colors. . . .

...

8) Subject to the provisions in this Agreement, LNC and Royal King hereby release, acquit and discharge one another . . . from and against any and all past and present claims, demands, obligations, liabilities, and causes of action worldwide, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown arising out of or in connection with the Products. . . .

(Settlement Agreement ¶¶ 5, 8.)

On November 4, 2010, LNC brought this suit against RK alleging breach of contract, fraud in the inducement, tortious interference with existing and prospective contractual or business relations, and patent infringement. (Dkt. No. 20.) In response, RK raised a number of affirmative defenses including equitable estoppel and the statutes of limitation. (Dkt. No. 116.) RK brought counterclaims accusing LNC of breach of contract, tortious interference with existing and prospective contractual or business relations, and fraud in the inducement. (*Id.*)

B. Jury Trial

The Court began a jury trial in the present case on October 7, 2013. Three days later, the Jury returned a unanimous verdict. In its verdict, the Jury found that RK had violated Paragraph 1 of the Settlement Agreement by under-reporting sales and underpaying royalties on the Settlement Products for the period before the Settlement Agreement; that RK had violated Paragraph 6 of the Settlement Agreement by selling versions of the Settlement Products that were likely to cause confusion with LNC's products for the period after the Settlement Agreement; and that \$10,000,000.00 was the "sum of money, if paid now" which would "adequately compensate Plaintiffs Luv N' Care and Admar as to . . . [LNC's claim of] breach of contract." (Dkt. No. 195 ("Verdict") ¶¶ 1–2, 4(A).)

The Jury further found that RK did not engage in intentional interference with LNC and/or Admar's existing or prospective contractual or business relations regarding any of LNC and/or Admar's customers; and that \$0.00 was the "sum of money, if paid now" which would "adequately compensate Plaintiffs Luv N' Care and Admar as to . . . [LNC's claim of] intentional interference." (Verdict ¶¶ 3, 4(B).) The Court has reaffirmed the Jury's findings on this count. (Dkt. No. 283.)

The Jury further found that LNC and/or Admar did engage in intentional interference with RK's existing or prospective contractual or business relations regarding any of RK's customers but that \$0.00 was the "sum of money, if paid now" which would "adequately compensate Defendant Royal King as to . . . [RK's claim of] intentional interference." (Verdict ¶¶ 8, 9(B).) The Court previously granted a motion filed by LNC for judgment as a matter of law under Rule 50(b) on liability on these claims, finding that there was no support for the Jury's finding of Plaintiff's liability. (Dkt. No. 283.)

C. Bench Trial

On December 4, 2013, the Court held a bench trial to hear additional evidence presented solely on RK's fraud in the inducement claim. (*See* Dkt. No. 213.) The Court also heard arguments relating to RK's equitable estoppel defense. (*See* Dkt. No. 213 at 3–4; Dkt. No. 198 at 1.) On February 14, 2014, this Court entered its Findings of Fact and Conclusions of Law relating to RK's fraud in the inducement claim and equitable estoppel defense. (Dkt. No. 234.) This Court found that RK had not demonstrated by a preponderance of the evidence that LNC had fraudulently induced RK to enter into the Settlement Agreement, or that LNC's breach of contract claim should be barred by the doctrine of equitable estoppel. (*Id.*) Accordingly, judgment was entered in favor of LNC and against RK on RK's claim for fraudulent inducement and defense of equitable estoppel. (*Id.*)

RK moved the Court to amend, under Rule 52(b), the Court's findings in the February 14, 2014 Memorandum Opinion and Order (Dkt. No. 234 ("Memorandum Opinion")) denying RK's claim for fraud in the inducement and RK's defense of equitable estoppel. (Dkt. No. 240.) RK asserted that the Court should find additional facts that would support a finding that RK had proven by a preponderance of the evidence its claim for fraud in the inducement and its defense

of equitable estoppel. (*See* Dkt. No. 240.) The Court denied RK's motion. (Dkt. No. 282.)

II. DAMAGES FOR LNC'S CONTRACT CLAIM AGAINST RK

On LNC's breach of contract claim against RK, the Jury found that RK was liable and awarded a \$10 million lump sum to LNC. (Verdict ¶¶ 1, 2, 4(A)). RK seeks a new trial or, in the alternative, reduction of the Jury's award, while LNC seeks additional post-verdict damages.

A. RK's Motion for New Trial on Damages or Reduction of Award

RK moves the Court to grant a new trial on the amount of LNC's damages, or, at least, to reduce the Jury's \$10 million lump sum damages award. (Dkt. No. 240 at 27–28.)

1. Applicable Law

Under FRCP 59(a), a new trial can be granted to any party after a jury trial on any or all issues “for any reason for which a new trial has heretofore been granted in an action at law in federal court.” FRCP 59(a). In considering a motion for a new trial, the Court applies the law of the Fifth Circuit, where “[a] new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course.” *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 612–13 (5th Cir. 1985). “The decision to grant or deny a motion for a new trial is within the discretion of the trial court and will not be disturbed absent an abuse of discretion or a misapprehension of the law.” *Prytania Park Hotel, Ltd. v. General Star Indem. Co.*, 179 F.3d 169, 173 (5th Cir. 1999).

Remittitur, a reduction of a damages award, is appropriate where the award “is greater than the maximum amount the trier of fact could have properly awarded,” *Delahoussaye v. Performance Energy Servs., L.L.C.*, 734 F.3d 389, 394 (5th Cir. 2013), or is “clearly excessive,” *Thompson v. Connick*, 553 F.3d 836, 865 (5th Cir. 2008). However, the Fifth Circuit “will not reverse a jury verdict for excessiveness except on the strongest of showings.” *Knight v. Texaco*,

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