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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-9942 GAF (AGRx)	Date	October 17, 2013
Title	LegalZoom.com Inc. v. Rocket Lawyer Incorporated		

Present: The Honorable	**GARY ALLEN FEESS**	
Stephen Montes Kerr	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **(In Chambers)**

ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I.
INTRODUCTION

Plaintiff LegalZoom.com, Inc. ("Plaintiff" or "LegalZoom") and Defendant Rocket Lawyer Incorporated ("Defendant" or "Rocket Lawyer") are competitors in the rising industry of online legal products. (Docket No. 31 [Plaintiff's Motion for Summary Judgment ("Mem.")] at 1.) Both offer incorporation and business formation services and other online legal products through their websites. (Id.) In the present lawsuit, LegalZoom contends that Rocket Lawyer competes unfairly by falsely advertising its products and services as "free" when in fact they come at a price. (Docket No. 14 [First Amended Complaint ("FAC")].) The allegedly false and misleading offer of "free" services draws consumers to Defendant's business to the detriment of Plaintiff's business. Through its operative complaint, LegalZoom contends that Defendant's actions violate the Lanham Act and the California Unfair Competition Law.

LegalZoom now moves for summary judgment, contending that the undisputed facts regarding Rocket Lawyer's advertising practices entitles LegalZoom to judgment as a matter of law on its § 43(a) Lanham Act and California Business and Professions Code §§ 17200 and 17500 claims. Defendant opposes with evidence that its advertisements are not false because it in fact offers a free trial, various free legal documents, free legal help to its registered users, and its website clearly and repeatedly discloses any additional costs consumers may have to pay before they complete their purchases. (See Docket No. 37 [Defendant's Opposition to Plaintiff's Motion for Summary Judgment ("Opp.")].)

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For the reasons detailed below, the Court concludes that Plaintiff has failed to carry its burden and that genuine issues of material fact remain as to whether Defendant committed these statutory violations. Accordingly, Plaintiff's motion for summary judgment is **DENIED**.

II.
BACKGROUND

The following facts are undisputed or without substantial controversy.

Plaintiff and Defendant are both providers of online legal products and compete with one another in the online legal products industry. (Docket No. 37-2 [Defendant's Statement of Material Facts ("SMF")] ¶¶ 1-2.) Both offer incorporation and formation services and other online legal products. (Id. ¶ 3.)

Defendant advertises several free services online. (Id. ¶¶ 5-6.) Specifically, Defendant's online advertisements include the following: 1) "Incorporate for Free. . . Pay No Fees ($0);" 2) "Free. . .LLCs;" 3) "Free help from local attorneys" and "Free legal review;" 4) "Zoom Charges $99. Rocket Lawyer is Fast, Easy, & Free. Incorporate Your Business Today;" and 5) "Free" trials of Defendant's "Basic Legal Plan" and "Pro Legal Plan." (Id. ¶¶ 6, 10, 17; Mem. at 1.) Each advertisement either contains a link to Defendant's website or is published directly on Defendant's website. (SMF ¶ 68.)

Defendant offers two types of subscription plans—a Pro Legal Plan with access to all of Defendant's functionality, and a Basic Legal Plan, which excludes the functionality related to forming or running a business. (Id. ¶ 36.) Defendant also offers free trials of both plans for seven days at no cost, provided that the consumer cancels the plan by the end of the seventh day. (Id. ¶ 37.) If a consumer chooses not to cancel the trial plan by the end of the seventh day, the trial converts to a paid version of the plan on the eighth day. (Id. ¶ 38.) Defendant's website contains explanations of the terms of the paid plans and the free trials. (Id. ¶ 41-45.) The explanatory pages for both plans contain information regarding the free trial and conversion to subscription plans, including a toll free phone number a user could call to cancel the free trial plan. (Id. ¶ 44.) The toll free number appears at the top of the registration pages. (Id.) Defendant also has a Frequently Asked Questions section on its website devoted to questions about the free trial including details about the different ways a customer can cancel any plan. (Id. ¶ 45.)

All members enrolled in a free trial or paid Pro Legal Plan receive free incorporation services, meaning that Defendant does not charge a fee for its services in assisting in the filing

and processing of incorporation or entity formation papers. (Id. ¶ 47.) Members enrolled in Defendant's free trial or paid Pro Legal Plan who require incorporation services pay only the state-mandated filing fees, which Defendant discloses at various stages of its incorporation interview prior to requiring any payment information. (Id. ¶ 48.) The state fees are also disclosed on the incorporation and entity formation page of Defendant's website, and at other points prior to the customer inserting any credit card information. (Id. ¶ 69.) Plaintiff adamantly disputes the adequacy and conspicuousness of these disclosures. (See Mem.; Docket No. 42 [Plaintiff's Reply ("Reply")].)

Defendant's subscription plans include access to Defendant's "On Call" attorneys who can provide legal advice or live consultations, answer written questions, and review legal documents. (Id. ¶ 50.) Outside of the On Call program, registered users, whether on a free trial or a paid legal plan, can contact an attorney for a free consultation. (Id. ¶ 51.) Plaintiff argues that after it filed its original complaint, Defendant changed its On Call program to allow customers enrolled in a free trial to have access to one free legal consultation as opposed to reserving that service for paying members. (Mem. at 3-4) However, Defendant maintains that Plaintiff's complaint did not prompt it to change the terms of the program. (See SMF ¶¶ 51, 67.)

As a result of these advertisements offering various free services, Plaintiff contacted Defendant several times by email and phone explaining that it believed Defendant was engaged in false advertising and unfair competition. (Id. ¶¶ 21-27.) Plaintiff asked Defendant to take down its advertisements relating to free trials and free services because it believed that Defendant did not properly disclose that state fees still had to be paid or that customers enrolled in a free trial would be charged if they failed to cancel the plan after a week. (Id.; see also Mem.) Defendant did not remove these advertisements because it believed that they properly promoted the free trials and services and that its website adequately disclosed the terms and prices of the different services. (Id. ¶¶ 41-48; 59; 68-71; 76; see also Opp.)

This lawsuit followed.

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III.
DISCUSSION

A. SUMMARY JUDGMENT STANDARD

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). Thus, when addressing a motion for summary judgment, the Court must decide whether there exist "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial, which it can meet by presenting evidence establishing the absence of a genuine issue or by "pointing out to the district court . . . that there is an absence of evidence" supporting a fact for which the non-moving party bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Where the moving party bears the burden of persuasion at trial, it will meet its burden of persuasion on summary judgment only if it can show "that the evidence is so powerful that no reasonable jury would be free to disbelieve it." Shakur v. Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (internal quotation marks omitted); see also S. Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003) ("As the party with the burden of persuasion at trial, the [moving party] must establish beyond controversy every essential element of its . . . claim." (internal quotation marks omitted)). In other words, the moving party "must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987 (9th Cir. 2006) (internal quotation marks omitted). However, "the moving party need not disprove the other party's case." Id. (citing Celotex, 477 U.S. at 325).

Once the moving party has carried its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324; Fed. R. Civ. P. 56(e)(2). To defeat summary judgment, the non-moving party must put forth "affirmative evidence" that shows "that there is a genuine issue for trial." Anderson, 477 U.S. at 256–57. This evidence must be admissible. See Fed. R. Civ. P. 56(c), (e). The non-moving party cannot prevail by "simply show[ing] that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, the non-moving party must show that evidence in the record could lead a rational trier of fact to find in its favor. Id. at 587. In reviewing the record, the Court must

believe the non-moving party's evidence, and must draw all justifiable inferences in its favor. Anderson, 477 U.S. at 255.

B. APPLICATION

1. PLAINTIFF'S CLAIM UNDER THE LANHAM ACT – STANDING

As a threshold issue, Defendant argues that Plaintiff does not have standing to bring a false advertising claim under § 43(a) of the Lanham Act because "[a]llegations of harm are insufficient to meet the burden for standing; [Plaintiff] must provide specific facts demonstrating its harm." (Opp. at 24.) However, a plaintiff has standing to bring a false advertising claim under the Lanham Act if the plaintiff is in direct competition with defendant and has properly alleged a discernibly competitive injury stemming from the defendant's allegedly false advertising. See Barrus v. Sylvania, 55 F.3d 468, 470 (9th Cir. 1995) (for standing purposes, the alleged injury must be "competitive, i.e., harmful to the plaintiff's ability to compete with defendant") (inner quotation and citation omitted); Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1109 (9th Cir. 1991) (stating that "a discernibly competitive injury must be alleged" and that standing exists where false advertisements "theoretically draw[]. . .[customers] away from" competitor). In Waits, the Ninth Circuit reconciled conflicting jurisprudence concerning standing requirements under the Lanham Act and concluded that if a defendant wrongfully misrepresents a quality of its product, a competitor plaintiff would have standing because the misrepresentation theoretically draws customers away from the plaintiff's competing products. 978 F.2d at 1109.

Here, it is undisputed that Plaintiff and Defendant are both providers of online legal products and compete with one another in the online legal products industry. (SMF ¶¶ 1-2.) Plaintiff alleges that Defendant misrepresents the nature of its products by advertising them as "free" when they are actually not. (FAC.) Plaintiff claims that these false advertisements have caused Plaintiff to suffer a discernibly competitive injury because they have diverted or are likely to divert business away from Plaintiff. (Id.) This alleged injury is sufficient to meet the "competitive injury" requirement for standing in false advertising cases under the Lanham Act. See Coastal Abstract Serv. Inc. v. First Am. Title Ins. Co., 173 F.3d 725, 734 (9th Cir. 1999) (standing exists where advertisement had potential of diverting business away from competitor); Waits, 978 F.2d at 1109 (standing exists where false advertisements "theoretically draw[] [customers] away from" the plaintiff). Thus, the Court concludes that Plaintiff has standing to bring this Lanham Act claim against Defendant.

2. THE ELEMENTS

In the Ninth Circuit, a Lanham Act § 43(a) false advertising claim includes the following elements:

> (1) a false statement of fact by the defendant in a commercial advertisement about its own or another's product;
>
> (2) the statement actually deceived or has the tendency to deceive a substantial segment of its audience;
>
> (3) the deception is material, in that it is likely to influence the purchasing decision;
>
> (4) the defendant caused its false statement to enter interstate commerce; and
>
> (5) the plaintiff has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to defendant or by a lessening of the goodwill associated with its products.

Southland Sod Farms v. Stover Seed Co. ("Southland Sod"), 108 F.3d 1134, 1139 (9th Cir. 1997) (internal footnote omitted) (citation omitted); see also Jarrow Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d 829, 835 (9th Cir. 2002) (citing Southland Sod). "To demonstrate falsity within the meaning of the Lanham Act, a plaintiff may show that the statement was literally false, either on its face or by necessary implication, or that the statement was literally true but likely to mislead or confuse consumers." Id. (citing Castrol Inc. v. Pennzoil Co., 987 F.2d 939, 943, 946 (3d Cir. 1993)).

a. Genuine Issues of Material Fact Exist as to Whether Defendant's Advertisements are "Literally False"

Plaintiff argues that Defendant's advertisements are literally false as a matter of law because, contrary to the proclamations of its online advertisements, Defendant's customers cannot access its services and products for "free." (Mem. at 8.) This amounts to an argument that no rational jury could conclude that the advertisements were not literally false. That is an extraordinarily high hurdle to clear at this stage of the proceedings and flies in the face of Ninth Circuit precedent.

In the Ninth Circuit, literal falsity is a question of fact, and summary judgment should not be granted where a reasonable jury could conclude a statement is not false. See Southland Sod, 108 F.3d at 1144–45 (overturning grant of summary judgment where a reasonable jury could determine advertisements were false based on conflicting testimony); see also eMove Inc. v. SMD Software Inc., 2012 WL 1379063, at *4 (D. Ariz. Apr. 20, 2012) ("Whether a statement is literally false is a question of fact."). Moreover, to determine whether an advertising claim is literally false, the advertisement "must always be analyzed in its full context." Southland Sod, 108 F.3d at 1139; see also Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir. 1995) (holding that no reasonable consumer would be misled by advertisement at issue when taken in context of whole document that contained clear and readable disclosures in smaller print below the promotion).

Although Defendant's advertisements do not enumerate all of the terms of its offer in its short online advertisements, a jury could reasonably conclude that the advertisements, when considered in context, are not literally false within the meaning of § 43(a). In Southland Sod, the district court had granted defendant's motion for summary judgment on the plaintiff's § 43(a) claim because, among other things, plaintiff had failed to show a genuine issue of material fact on the issue of falsity regarding certain bar charts used in advertisements. The circuit disagreed. Because the bar chart advertisements at issue there expressly stated that the charts represented findings from a particular location and limited time-frame, the reviewing court concluded that a reasonable jury could find that the charts actually represented more general, broad findings and thus contained literally false statements when its representations were "read as a whole." 108 F.3d at 1144. See also Castagnola v. Hewlett-Packard Co., 2012 WL 2159385, at *9-10 (N.D. Cal. June 13, 2012) (in false advertising case, district court concluded that statements on the webpage should not be viewed in isolation and that references to "offer details" were sufficient to give notice of nature and terms of the program at issue).

As in Castagnola, all of Defendant's online advertisements either contain a link to Defendant's website or are published on Defendant's website, and consumers can access the advertised offers only by visiting this website. (SMF ¶ 68.) Upon visiting Defendant's website, a consumer is presented with details of its services and disclosures about the terms of the free trial and the fact that state incorporation fees must be paid even though Defendant's processing and filing incorporation services are free. (Docket No. 38 [Declaration of Hong-An Vu in Support of Defendant's Opp.], Exs. 5-11; see also Opp. at 13-16.) Defendant's website also provides a link to its On Call Terms of Service which explains that registered users, including members and those enrolled in a free trial, have access to free legal help and consultations. (Vu Decl., Exs. 12-13; Opp. at 14.) A reasonable jury could conclude that, when viewed in the context of Defendant's website included in the advertisements, the details of the advertised free

services and the terms of the free trial are sufficiently disclosed to consumers and thus not literally false. Defendant notifies customers enrolling in the free trial that their credit cards will be charged if they do not cancel the subscription after seven days by displaying the terms of the free trial at the top of the registration page. (Vu Decl., Exs. 5-6.) A reasonable jury could conclude that the terms are clear and readable and sufficiently put customers on notice that, similar to other free trials offered by different service providers, they must affirmatively opt out within a certain time frame to avoid charges. See Castagnola, 2012 WL 2159385, at *10 (concluding that disclosures placed on the same page and in close proximity to the box in which consumers could enter their email and zip code were sufficient and readable, even though the offer details appeared in a smaller font than the promotion).

Plaintiff argues that this "negative option" requirement of the trial membership undermines Defendant's claim that the trial is "free." (Mem. at 9.) Plaintiff cites for support Spiegel, Inc. v. Federal Trade Commission, 494 F.2d 59, 63 (7th Cir. 1974), where a free trial program was held to be not truly free because it was conditioned on the customer meeting certain credit criteria and because the terms of these conditions were not clearly stated. By contrast, Defendant's free trial program is not conditioned on any criteria or purchases, and a jury could find that the terms of the trial are stated in a clear, readable manner on the registration page. The fact that a customer will be charged if she fails to cancel her membership after seven days does not negate the fact that the trial period itself is unconditionally free.

Moreover, a jury could also reasonably conclude that Defendant's advertisement stating, "Zoom Charges $99, We're Free," is not literally false when considered in context. Both Plaintiff and Defendant require customers to pay the state incorporation fees on top of their companies' processing and filing fees. (See SMF ¶ 72; Opp. at 14.) When viewed in this context, a jury could conclude that the comparison pertains only to the discrepancies between the two companies' processing and filing fees. If anything, the comparison to Plaintiff's price provides more context for understanding that Defendant's advertisements do not purport to conceal the attendant state incorporation fees. Both companies' processing and filing fees (or lack thereof) are distinct from the state fees that every person who incorporates a business must pay. (See Opp. at 14.) It is true that a customer can save the $99 charged by Plaintiff for its processing and filing fee by enrolling in the free trial offered by Defendant. And this comparison is further explained on Defendant's website through a chart that presents a side-by-side comparison of the various prices associated with incorporation, including processing fees and state fees, that are charged by both Defendant and a "Competitor." (Vu Decl., Ex. 9.) A jury could reasonably conclude that Defendant's advertisement is not literally false because it truthfully promotes the free processing and filing fees included in its free trial.

In its reply, Plaintiff states that Defendant "uses 'free' in its advertisements to lure unsuspecting customers to its website and away from its competitors, and only once the deception is complete are customers provided with the possibility of learning about the filing fees, buried in the pages of [Defendant's] website." (Reply at 6.) This is, however, argument which is presented without evidentiary support. Moreover, Plaintiff also fails to provide evidence that certain fees are "buried" in Defendant's website or revealed only after the "deception is complete." In fact, Defendant discloses the state fees and the terms of the trial period well before a purchase is complete. (See Vu Decl., Exs. 5-11.) Defendant also makes its customers click a button acknowledging that they have read and agree to the terms of service before they commit to the trial period. (Id., Exs. 5-6.) Whether customers are "lured" to Defendant's website by its "free" advertisements and whether Defendant provides adequate disclosures are questions of fact that cannot be resolved at the summary judgment stage.

Plaintiff's arguments in support of its false advertising claim fail to consider Defendant's advertisements in context and instead improperly focus on the word "free" divorced from the advertisements and services as a whole. Plaintiff's statement, quoting Castrol, that the "test for literal falsity is simple: if a defendant's claim is untrue, it must be deemed literally false" is misplaced because it does not acknowledge the fact that the word "free," when read in context, could refer to a particular service offered by the company. (Mem. at 8 (citing Castrol, 987 F.2d at 944).) Additionally, Castrol is distinguishable from the instant action. In Castrol, the plaintiff brought a false advertising claim against the defendant alleging that its advertisements asserting that its product, motor oil, "outperformed" other leading motor oils was literally false. 987 F.2d at 941. The plaintiff put forth affirmative evidence of tests demonstrating that the defendant's motor oil was in fact inferior to the plaintiff's motor oil, proving that defendant's claims of superiority were contrary to fact and therefore literally false. Id. at 944. Here, by contrast, Plaintiff makes only conclusory statements that Defendant's advertisements are false because customers still must pay the state incorporation fees and enroll in a "negative option" plan to obtain the free trial. (Mem. at 8-9.) However, a reasonable jury could conclude that when considered as a whole, Defendant's advertisements represent only the free processing and filing fees that a customer can obtain with a free trial, and do not deceptively conceal the state incorporation fees. When viewed in this context, Defendant's advertisements are not false, but rather are a truthful promotion of its free trial that could potentially distinguish its services from other companies by allowing customers to incorporate without paying any processing and filing fees.

Therefore, because a reasonable jury could conclude that Defendant's advertisements are truthful, Plaintiff has failed to prove that no genuine issues of material fact exist as to whether Defendant's advertisements are literally false.

b. Plaintiff has Failed to Provide Sufficient Evidence Demonstrating that Defendant's Advertisements are Likely to Mislead or Confuse Consumers as a Matter of Law

Although an advertisement that is not "literally false" can still be actionable under the Lanham Act if the plaintiff can show that the advertisement is likely to mislead or confuse consumers, Plaintiff here has failed to do so. See Southland, 108 F.3d at 1140. Where a statement is not literally false but is misleading in context, a plaintiff must provide proof that the "advertising actually conveyed the implied message and thereby deceived a significant portion of the recipients." William H. Morris Co. v. Group W, Inc., 66 F.3d 255, 258 (9th Cir. 1995) (per curiam). Therefore, unless an advertisement is literally false, a party seeking relief under § 43(a) of the Lanham Act bears the ultimate burden of proving actual deception by using reliable consumer surveys or market research. See Walker & Zanger, Inc. v. Paragon Indus., Inc., 549 F. Supp. 2d 1168, 1182 (N.D. Cal. 2007) ("But if an advertisement is not false on its face . . . plaintiff must produce evidence, usually in the form of market research or consumer surveys, showing exactly what message ordinary consumers perceived."); see also Johnson & Johnson * Merck Consumer Pharm. Co. v. Smithkline Beecham Corp., 960 F.2d 294, 297 (2d Cir. 1992) ("It is not for the judge to determine, based solely upon his or her intuitive reaction, whether the advertisement is deceptive.").

Here, Plaintiff has failed to carry its burden of proving that Defendant's advertisements actually deceive consumers. Plaintiff provides no evidentiary support of consumer deception in its initial motion for summary judgment, but rather relies only on the conclusory statement that Defendant's advertisements are "likely to deceive their intended audience. . .because they are likely to cause confusion or mistake as to the actual cost" of Defendant's services. (Mem. at 11.) In its reply, Plaintiff provides several anecdotal customer statements posted on the online review site "www.sitejabber.com," in which some customers complained about Defendant's charges. (Reply at 12; Docket No. 42-2 [Supplemental Declaration of Mary Ann T. Nguyen] ¶ 3, Ex. B.) However, a handful of customer statements on one online review site is not sufficient to demonstrate that a "significant portion" of customers were deceived and is not necessarily a reliable consumer survey or market research. See William H. Morris Co., 66 F.3d at 258; Smithkline Beecham, 960 F.2d at 298; Walker & Zanger, Inc., 549 F. Supp. 2d at 1182.

Because Plaintiff has failed to prove actual consumer deception or that Defendant's advertisements are literally false, the Court cannot grant summary judgment on this first element of Plaintiff's Lanham Act claim. Because there are genuine issues of fact as to at least two of the elements of the Lanham Act claim, Plaintiff's motion for summary judgment on that claim is **DENIED**.

2. PLAINTIFF'S CLAIMS UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE

Similar to the Lanham Act, California Business and Professions Code § 17500 ("FAL") makes it unlawful for any person to "induce the public to enter into any obligation" based on a statement that is known, or reasonably should be known, to be "untrue or misleading." Cal. Bus. & Prof. Code § 17500. To prevail on its FAL claim, Plaintiff must show that "members of the public are likely to be deceived" under a reasonable consumer test. Davis v. HSBC Bank Nev., N.A., 691 F.3d 1152, 1162 (9th Cir. 2012); see also Freeman, 68 F.3d at 289. Plaintiff brings its California Business and Professions Code § 17200 ("UCL") unfair competition claim on the same false advertising grounds as its Lanham Act and FAL claims. (FAC ¶¶ 34-40.) Thus, this claim is entirely derivative of the other causes of action.

In the Ninth Circuit, claims of unfair competition and false advertising under state statutory and common law are "substantially congruent" to claims made under the Lanham Act. Cleary v. News Corp., 30 F.3d 1255, 1262-63 (9th Cir. 1994). Because Plaintiff has failed to prove that Defendant's advertisements are false and misleading as a matter of law in the context of its Lanham Act claim, so too the Court must find that Plaintiff has failed to dispose of all genuine issues of material fact in regard to its FAL and UCL claims. Accordingly, for the reasons discussed above, Plaintiff's motion for summary judgment is **DENIED** with respect to the FAL and UCL claims.

IV.
CONCLUSION

For the foregoing reasons, Plaintiff has failed to prove that no genuine issues of material fact exist as to whether Defendant violated the Lanham Act and California Business and Professions Code. Accordingly, Plaintiff's motion for summary judgment is **DENIED**. The hearing presently scheduled for October 21, 2013, is hereby **VACATED**.

IT IS SO ORDERED.