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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HOMELAND HOUSEWARES, LLC, a California LLC; NUTRIBULLET, LLC, L a California LLC,	)	Case No. CV 14-03954 DDP (MANx)
	)	
Plaintiff,	)	<b>ORDER DENYING CROSS-MOTIONS FOR</b>
	)	<b>SUMMARY JUDGMENT OR PARTIAL</b>
v.	)	<b>SUMMARY JUDGMENT AND MOTION TO</b>
	)	<b>EXCLUDE EXPERT TESTIMONY OF SARAH</b>
	)	<b>BUTLER</b>
SHARKNINJA OPERATING LLC,	)	[Dkt. Nos. 185, 186, 189]
	)	
Defendants.	)	
	)	
_____	)	

Presently before the court are: (1) Plaintiffs Homeland Housewares, LLC, and Nutribullet, LLC (collectively "Plaintiffs" or "Homeland")'s Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Plaintiffs' False Advertising Claim; (2) Plaintiffs' Motion to Exclude the Expert Testimony of Sarah Butler; and (3) Defendant SharkNinja Operating LLC ("SharkNinja")'s Motion for Summary Judgment or, in the Alternative, for Partial Summary Judgment. (Dkt. Nos. 185, 189, 186). After considering the parties' submissions and hearing oral argument, the court enters the following Order.

1 **I. BACKGROUND**

2 The court has set forth the relevant background in several  
3 previous Orders. (See Dkts. 33, 39, 46, 69.) In brief, Homeland and  
4 SharkNinja are competitors in the home blender market. (Decl.  
5 Kaitlyn Hebert in support of Def.'s Mot. Summ. J. ("Def. Mot."),  
6 ¶3.) Primarily at issue in this case is a comparison chart printed  
7 on the packaging for SharkNinja's NutriNinja Pro ("BL450") product.  
8 (Wilton Decl., Exs. 5 & 6.) The chart in question, labeled "NUTRI  
9 NINJA vs. NUTRIBULLET," compares the products along various  
10 criteria including wattage, speed, portability, and other features.  
11 (Id.) Notably, the chart does not specify whether it is comparing  
12 the BL450 to a particular Nutribullet model or all Nutribullet  
13 products.

14 According to Homeland, the chart constitutes false advertising  
15 that is entirely inaccurate as to the higher end NutriBullet Pro  
16 ("NB 900") and largely inaccurate as to the NutriBullet Classic  
17 ("NB 600"). This court previously granted a preliminary injunction  
18 requiring SharkNinja to remove the allegedly infringing statements  
19 from the BL450 box. (Dkt. 33 at 17-18.) Homeland now brings a  
20 motion for summary judgment, and in the alternative, for summary  
21 adjudication, of its false advertising claims against SharkNinja.  
22 Homeland also moves to exclude the testimony of SharkNinja's expert  
23 Sarah Butler who has conducted a survey on certain aspects of how  
24 consumers interpret the BL450's packaging. SharkNinja has moved for  
25 summary judgment, and in the alternative, for summary adjudication,  
26 on all claims.

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1 **II. LEGAL STANDARD**

2 Summary judgment is appropriate where the pleadings,  
3 depositions, answers to interrogatories, and admissions on file,  
4 together with the affidavits, if any, show "that there is no  
5 genuine dispute as to any material fact and the movant is entitled  
6 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
7 seeking summary judgment bears the initial burden of informing the  
8 court of the basis for its motion and of identifying those portions  
9 of the pleadings and discovery responses that demonstrate the  
10 absence of a genuine issue of material fact. See Celotex Corp. v.  
11 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
12 the evidence must be drawn in favor of the nonmoving party. See  
13 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the  
14 moving party does not bear the burden of proof at trial, it is  
15 entitled to summary judgment if it can demonstrate that "there is  
16 an absence of evidence to support the nonmoving party's case."  
17 Celotex, 477 U.S. at 323.

18 Once the moving party meets its burden, the burden shifts to  
19 the nonmoving party opposing the motion, who must "set forth  
20 specific facts showing that there is a genuine issue for trial."  
21 Anderson, 477 U.S. at 256. Summary judgment is warranted if a  
22 party "fails to make a showing sufficient to establish the  
23 existence of an element essential to that party's case, and on  
24 which that party will bear the burden of proof at trial." Celotex,  
25 477 U.S. at 322. A genuine issue exists if "the evidence is such  
26 that a reasonable jury could return a verdict for the nonmoving  
27 party," and material facts are those "that might affect the outcome  
28 of the suit under the governing law." Anderson, 477 U.S. at 248.

1 There is no genuine issue of fact "[w]here the record taken as a  
2 whole could not lead a rational trier of fact to find for the  
3 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio  
4 Corp., 475 U.S. 574, 587 (1986).

5 It is not the court's task "to scour the record in search of a  
6 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
7 1278 (9th Cir. 1996). Counsel has an obligation to lay out their  
8 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d  
9 1026, 1031 (9th Cir. 2001). The court "need not examine the entire  
10 file for evidence establishing a genuine issue of fact, where the  
11 evidence is not set forth in the opposition papers with adequate  
12 references so that it could conveniently be found." Id.

### 13 **III. DISCUSSION**

#### 14 **A. Daubert Motion and Summary Judgment Claims**

15 Plaintiff moves to exclude the testimony of Defendant's expert  
16 Sarah Butler under Federal Rule of Evidence 702 and Daubert v.  
17 Merrell Dow Pharms., Inc., 509 U.S. 579 (1993). Having reviewed the  
18 expert report and considered the parties' arguments, the court  
19 DENIES the motion. Furthermore, both parties seek summary judgment,  
20 or in the alternative, summary adjudication on the false  
21 advertising claim arising under Lanham Act section 43. Defendant  
22 also seeks summary judgment on Homeland's state law claims for  
23 unfair competition, false advertising, and trade libel. Having  
24 considered the admissible record evidence, the court finds there  
25 are triable issues of fact and DENIES summary judgment on all  
26 claims.

1           **B. Plaintiff Homeland Houseware's Standing**

2           Pursuant to the Supreme Court's decision in Lexmark Intern. v.  
3 Static Control Components, 134 S. Ct. 1377 (2013), a party seeking  
4 to establish standing to recover under Section 43(a) of the Lanham  
5 Act must meet the minimum requirements of Article III  
6 standing-injury, causation, and redressability-and must also "plead  
7 (and ultimately prove) an injury to a commercial interest in sales  
8 or business reputation proximately caused by the defendants  
9 misrepresentations." Id. at 1395. The requirement that a plaintiff  
10 allege "injury to a commercial interest in reputation or sales"  
11 exists to ensure that their claims come within the zone of  
12 interests protected by the statute. Id. at 1390. While a plaintiff  
13 may initially rely on allegations to meet the standing, they  
14 "cannot obtain relief without evidence of injury." Id. at 1395.

15           SharkNinja contends that Homeland Housewares LLC lacks  
16 standing and must be dismissed from the action. (Def. Mot. 24.)  
17 Specifically, SharkNinja argues that Homeland Housewares lacks a  
18 personal stake in the outcome of the lawsuit and cannot show sales  
19 or reputational injury. (Id.) In support, SharkNinja notes that  
20 Homeland Housewares admits it has never manufactured, marketed, or  
21 sold any of the products at issue in this case. (Price Decl., Ex.  
22 27 (Sapire Depo.), 14:3-15:2, 20:2-16, 22:20-22.) While Homeland  
23 Housewares did own intellectual property in the Nutribullet  
24 trademark, SharkNinja also asserts that the mark was assigned to  
25 non-party CapBran Holdings, LLC in September 2015. (Def. Mot. 24.)

26           Plaintiffs respond that Homeland Housewares has adequately  
27 alleged reputational injury to meet the Lexmark requirements. In  
28 Plaintiffs' view, SharkNinja's allegedly false advertising damages

1 the reputation of Homeland products in the mind of consumers and  
2 retail buyers. (Pl. Opp'n 22-23.) Even if Homeland did not  
3 manufacture the disparaged products, it still suffers reputational  
4 injury because of its association with the product. In support,  
5 Plaintiffs rely on Lexmark's teaching that "when a defendant harms  
6 a plaintiff's reputation by casting aspersions on its business, the  
7 plaintiff's injury flows directly from the audience's belief in the  
8 disparaging statements." Lexmark, 134 S. Ct. 1393. While Plaintiffs  
9 concede that Homeland Housewares assigned its trademark rights in  
10 2015 to a non-party, it contends that assignment is irrelevant for  
11 purposes of standing, which "'is determined by the facts that exist  
12 at the time the complaint is filed.'" (Pl. Opp'n 24 (quoting Clark  
13 v. City of Lakewood, 259 F.3d 996, 1006 (9th Cir. 2001)).)  
14 Plaintiffs also state that Homeland Housewares retained the right  
15 to prosecute claims on the non-party's behalf. (Pl. Opp'n 24.)  
16 Defendants contest this assertion because they read the original  
17 assignment as also transferring the right to sue. (Def. Reply 22  
18 (citing Wilton Decl., Ex. 20).)

19 At this juncture, the court concludes that Homeland has  
20 adequately alleged facts regarding injury to its reputation to meet  
21 Lexmark's standing inquiry. Contrary to SharkNinja's argument,  
22 Homeland Housewares does not assert injury solely on the grounds  
23 that they are a "sister corporation" of Nutribullet. Rather, the  
24 claim is grounded in allegations that it was the owner of the  
25 relevant trademark at the time the suit was initiated and that it  
26 was the company that invested money into building the BULLET  
27 blenders brand. (See First Amended Complaint ¶ 4.) If at trial,  
28 SharkNinja is able to substantiate its argument that Homeland

1 Housewares suffered no injury, it might then preclude Homeland  
2 Housewares from recovering, but dismissing Homeland Housewares at  
3 this stage is unwarranted.

4 **IV. CONCLUSION**

5 For the reasons state above the Cross-Motions for Summary  
6 Judgement, or, in the Alternative, Summary Adjudication and the  
7 Motion to Exclude the Expert Testimony of Sarah Butler are all  
8 DENIED.

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10 IT IS SO ORDERED.

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13 Dated: August 2, 2016

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DEAN D. PREGERSON  
United States District Judge