

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BARE ESCENTUALS BEAUTY, INC.,
Plaintiff,
v.
INTELLIGENT BEAUTY, LLC,
Defendant.

No. C 09-382 CRB

**ORDER DENYING MOTION TO
DISMISS FALSE ADVERTISING
CLAIMS**

Plaintiff Bare Escentuals brings this complaint against Defendant Intelligent Beauty, asserting *inter alia* causes of action for trademark infringement and false advertising. Defendant now moves to dismiss the false advertising claims. It raises two issues: (1) whether Defendant’s allegedly false advertisements are in fact puffery and therefore do not give rise to liability, and (2) whether Plaintiff’s claims with regard to Defendant’s allegedly misleading “free trial” campaign fail to allege a discernable competitive injury, which is a prerequisite to such a claim.

Because consideration of this motion would not be aided by oral argument, the hearing currently scheduled for January 8, 2010, is hereby VACATED.

As to whether Defendant’s allegedly false advertisement are unactionable “puffery,” Defendant’s motion is DENIED. Plaintiff’s allegations are sufficiently specific at the pleading stage to make dismissal unwarranted.

1 As to Plaintiff's standing to sue based upon Defendant's "free trial" campaign,
2 Defendant's motion is similarly DENIED. Plaintiff has alleged two forms of competitive
3 harm: (1) harm to its goodwill based on misidentification of Plaintiff as the source of such
4 advertisements, and (2) harm based upon consumers being tempted by the allegedly false
5 statement. This is sufficient to establish standing.

6 **IT IS SO ORDERED.**



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9 Dated: December 29, 2009

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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