

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STAY FROSTY ENTERPRISES LLC,
Plaintiff,
v.
TEESPRING, INC.,
Defendant.

Case No. [19-cv-04607-RS](#)

**ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiff Stay Frosty Enterprises, LLC (“Frosty”) owns a copyright portfolio including military-themed artwork and images; defendant Teespring, Inc. (“Teespring”) operates a website allowing individuals to create custom t-shirts and apparel. Since 2018, Frosty has asserted its right to “actual damages” resulting from Teespring’s alleged infringement of its portfolio. *See* Complaint, Dkt. 1 at 87. Yet Frosty has not produced, despite Teespring’s repeated prompting, *any* evidence of having incurred those damages. With fact discovery now closed, Teespring accordingly moves for partial summary judgment establishing Frosty cannot recover actual damages that, apparently, do not exist. Considering the record as a whole, such judgment is plainly warranted.

Over the course of fact discovery, Teespring asked Frosty for facts supporting its damages claim, including “the total annual revenue and . . . profits that [Frosty] earned from the asserted copyrights” in recent years, and “documents concerning any damages or harm, including without limitation money damage, [Frosty] claims to have suffered” on Teespring’s account. Interrogatories, Dkt. 153-2 at 6; Request for Production, Dkt. 153-3 at 7. Going off Frosty’s

1 representation that it needed more time to answer these requests, Teespring twice agreed to extend
 2 Frosty’s response deadline. When it became clear, after these extensions, that no responses were
 3 forthcoming, Teespring brought a motion to compel. The motion was denied on the purely
 4 procedural ground of untimeliness. *See generally* Discovery Order, Dkt. 150 (declining to compel
 5 Frosty’s response pursuant to Civil Local Rule 37-3’s prohibition of “motions to compel fact
 6 discovery . . . more than 7 days after the fact discovery cut-off”). With an eye toward summary
 7 judgment, Teespring declined to appeal: in its view, the facts (or lack thereof) were sufficiently
 8 favorable as Frosty had left them.

9 Bewilderingly, Frosty—in opposing this motion—has not made the damages issue one iota
 10 less favorable to Teespring. Across both briefing and oral argument, Frosty has not, for instance,
 11 identified any fact indicating actual damages; alluded to an evidentiary universe that might contain
 12 that sort of fact; or made so much as a single, conclusory assertion that it *has suffered* actual
 13 damages. Instead, Frosty invokes Rule 56(d), which authorizes deferred consideration of a motion
 14 for summary judgment if “[the] nonmovant shows by affidavit or declaration that, for specified
 15 reasons, it cannot present facts essential to justify its opposition[.]” Fed. R. Civ. P. 56(d).

16 To “delay summary judgment” under Rule 56(d), a party “must state what other *specific*
 17 evidence it hopes to discover and the relevance of that evidence to its claims.” *Stevens v.*
 18 *Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) (emphasis in original) (internal quotation
 19 marks, bracketing, and citation omitted). Frosty ignores this standard entirely. Rather than hinting
 20 at, let alone specifying, “facts essential to . . . its opposition” that might be gleaned from renewed
 21 discovery, Frosty trots out a general proposition: that because “the case is still in the early stages,”
 22 and “[v]ery few trials are being conducted in . . . this district” at the moment, “no prejudice” will
 23 flow “to Teespring . . . should . . . deferral of consideration of the motion be allowed.” *See*
 24 *generally* Opp’n Brief, Dkt. 154 at 4-5 (advancing this position while omitting mention of a single
 25 sought-after fact).

26 Whatever its merit, this argument misses (or, more likely, hopes to misdirect from) the
 27 point. Because Frosty’s Rule 56(d) request is unaccompanied by anything remotely resembling a

1 Rule 56(d) showing, the request is denied. The record thus remains as Teespring presents it—
2 utterly and indisputably bereft of evidence, prospective or otherwise, going to actual damages.
3 Against this backdrop, Teespring’s motion for partial summary judgment that Frosty is not entitled
4 to any such damages must be, and is, granted.¹ *Corelogic*, 899 F.3d at 678 (emphasis in original)
5 (internal quotation marks and citation omitted).

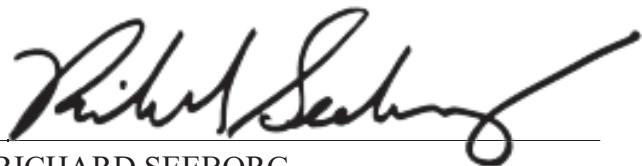
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7 **IT IS SO ORDERED.**

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9 Dated: February 17, 2021

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RICHARD SEEBORG
Chief United States District Judge

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¹ Beyond stressing the record’s absence of damages evidence generally, Teespring contends Frosty is obliged, as a matter of law, to produce particular types of damages evidence—namely, percipient and expert witness testimony. *See generally* Motion, Dkt. 153 at 10-14. Given the more fundamental defect in Frosty’s case, there is no need to reach this additional argument.