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United States District Court  
For the Northern District of California

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

SLEEP SCIENCE PARTNERS,

Plaintiff,

v.

AVERY LIEBERMAN and SLEEPING WELL,  
LLC,

Defendants.

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No. 09-04200 CW

ORDER DENYING  
DEFENDANTS'  
MOTION TO STAY  
DISCOVERY

Defendants Avery Lieberman and Sleeping Well, LLC have filed a motion to stay discovery in this case until it has advanced beyond the pleadings stage. Plaintiff Sleep Science Partners opposes the motion. After having considered all of the papers filed by the parties, the Court denies Defendants' motion.

BACKGROUND

On September 10, 2009, Plaintiff filed its complaint in this action. All of Plaintiff's claims were brought against both Defendants with the exception of a breach of contract claim brought solely against Lieberman. Lieberman answered the complaint, but Sleeping Well filed a motion to dismiss Plaintiff's claims for trade dress infringement, copyright infringement, unfair competition, civil conspiracy and unjust enrichment. Sleeping Well

1 did not move to dismiss the breach of contract, trade secret  
2 misappropriation and false advertising claims brought against it.  
3 While the motion was pending, Defendants responded to  
4 interrogatories and document requests and Lieberman was deposed.  
5 Plaintiff has issued subpoenas to three non-party witnesses seeking  
6 document production and is pursuing additional depositions during  
7 the first two weeks in June. Under the Court's current scheduling  
8 order, mediation must be completed by June 15 and the fact  
9 discovery deadline is July 30, 2010.

10 On May 10, 2010, the Court issued an order granting Sleeping  
11 Well's motion to dismiss the claims for trade dress infringement,  
12 copyright infringement, civil conspiracy and unjust enrichment and  
13 allowing Plaintiff leave to amend those claims. The Court denied  
14 Sleeping Well's motion to dismiss the common law unfair competition  
15 claim. On May 24, 2010, Plaintiff filed an amended complaint. The  
16 Court awaits Sleeping Well's decision either to answer or file a  
17 motion to dismiss.

18 DISCUSSION

19 It is well-established that "the power to stay proceedings is  
20 incidental to the power inherent in every court to control the  
21 disposition of the cases on its docket with economy of time, effort  
22 for itself, for counsel, and for litigants." Landis v. North Am.  
23 Co., 299 U.S. 248, 254 (1936).

24 As noted above, Sleeping Well initially moved to dismiss some,  
25 but not all, of the claims brought against it and it has willingly  
26 participated in discovery since December 14, 2009. Sleeping Well  
27 did not object to participating in discovery while its motion to  
28

1 dismiss was pending. However, Sleeping Well changed course in  
2 light of the Court's May 10, 2010 order, which dismissed some of  
3 Plaintiff's claims with leave to amend. Sleeping Well now argues  
4 that the Court should stay all discovery until the entire case has  
5 moved beyond the pleadings stage.

6 Plaintiff filed an amended complaint which includes most of  
7 the same causes of action as in the original complaint, and  
8 Sleeping Well has implied that it will move to dismiss all of the  
9 claims that were dismissed from the original complaint. Sleeping  
10 Well asserts, "Under these circumstances, allowing Plaintiff to  
11 proceed with discovery is prejudicial and inefficient to Defendants  
12 as it forces them to blindly proceed without even knowing what the  
13 full scope of the litigation will be." Motion at 6. Sleeping Well  
14 correctly notes that the full scope of the litigation will not be  
15 realized until all causes of action have either been answered or  
16 dismissed at the pleading stage. However, because a motion to  
17 dismiss will not resolve the case against any Defendant in its  
18 entirety, the stay that Sleeping Well requests is inappropriate.  
19 Regardless of the outcome of any future motion to dismiss that  
20 Sleeping Well might file, the parties will conduct discovery on the  
21 breach of contract, trade secret misappropriation, false  
22 advertising and common law unfair competition claims. These claims  
23 and the claims that the Court dismissed with leave to amend all  
24 relate to the same transactions, materials or events. Therefore,  
25 staying discovery will unnecessarily delay the case. Accordingly,  
26 the Court denies Defendants' motion to stay. Nevertheless, hearing  
27 no opposition, the Court will delay the mediation deadline to  
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1 September 15, 2010 and the fact discovery deadline to November 1,  
2 2010.

3 IT IS SO ORDERED.

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5 Dated: 05/28/10

*Claudia Wilken*

6 CLAUDIA WILKEN  
United States District Judge

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