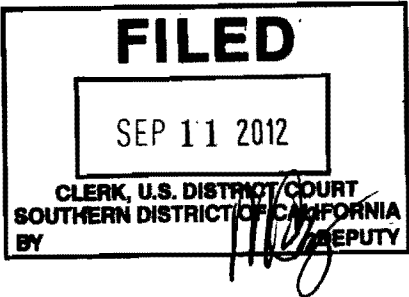


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BAUER BROS. LLC, a California limited liability company,

Plaintiff,

vs.

NIKE, INC., an Oregon Corporation,

Defendant.

NIKE, INC., an Oregon Corporation,

Counterclaimant,

vs.

BAUER BROS. LLC, a California limited liability company,

Counterdefendant.

CASE NO. 09cv500-WQH-BGS
ORDER

HAYES, Judge:

On March 12, 2009, Bauer Bros. LLC (“Bauer”) initiated this action by filing a Complaint against Nike, Inc. (“Nike”) alleging unfair competition under the Lanham Act, unfair competition under California law, and common law trademark infringement related to two U.S. Trademarks held by Bauer. (ECF No. 1). On October 8, 2010, Nike filed Amended Counterclaims seeking cancellation of the trademarks on the grounds of fraud upon the U.S. Patent and Trademark Office. (ECF No. 43).

1 On September 16, 2011, Nike filed a Motion for Summary Judgment on Liability (ECF
2 No. 109), and Bauer filed a Motion for Summary Judgment on Nike's Counterclaims (ECF No.
3 112). On May 24, 2012, the Court granted Nike's Motion for Summary Judgment on Liability,
4 concluding that "the trademark registrations held by Bauer ... are void *ab initio* and cannot be
5 used as the basis for a federal unfair competition or trademark infringement claim against
6 Nike." (ECF No. 180 at 12). The Court denied Bauer's Motion for Summary Judgment on
7 the Counterclaims, concluding that "Nike has shown sufficient evidence to support an
8 inference that Bauer committed fraud on the USPTO in obtaining federal registrations for the
9 trademarks" *Id.* at 15. The Counterclaims filed by Nike remain pending before the Court.

10 The entry of Judgment by the Clerk of the Court on May 24, 2012 was premature. (ECF
11 No. 181). The Clerk of the Court is instructed to re-open this case so that the Court may
12 resolve the Counterclaims filed by Nike.

13 The issuance of an Order Taxing Costs by the Clerk of the Court on June 29, 2012 was
14 premature. (ECF No. 192). Pursuant to Local Rule 54.1, "the prevailing party is entitled to
15 costs." (ECF No. 192). There is no prevailing party in this case, as claims remain pending
16 before the Court and the case is not properly closed.

17 CONCLUSION

18 IT IS HEREBY ORDERED that the Judgment in this case (ECF No. 181) and Order
19 Taxing Costs (ECF No. 192) are VACATED.

20 IT IS FURTHER ORDERED that the Motion for Attorney Fees filed by Nike (ECF No.
21 184) and Motion to File Documents Under Seal (ECF No. 185) are DENIED as premature.
22 The Sealed Lodged Proposed Documents (ECF No. 186) shall **not** appear on the public record.

23 The Clerk of the Court is instructed to re-open this case.

24 A pretrial conference is set for **September 28, 2012, at 10 A.M. in Courtroom 4.**

25 IT IS SO ORDERED.

26
27 Dated: 9/11/12

28

WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE