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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 YOUNGEVITY INTERNATIONAL,
12 CORP.,

13 Plaintiff,

14 v.

15 TODD SMITH, et al.,

16 Defendants.

Case No.: 16-cv-00704-BTM-JLB

ORDER

17
18 On December 26, 2019, the Honorable Barry Ted Moskowitz issued an Order
19 Setting Trial, which set May 11, 2020, as the trial date for Plaintiff’s (“Youngevity’s”)
20 claims under the Lanham Act and Unfair Competition Law. (ECF No. 675 at 1–2.) The
21 Order also set February 14, 2020, as the deadline for the parties to submit a proposed
22 pretrial order, which must contain: (1) a statement to be read to the jury; (2) a list of the
23 causes of action to be tried; (3) a list of witnesses; (4) a list of exhibits; (5) a statement of
24 stipulated facts; (6) a list of all deposition transcripts; and (7) proposed jury instructions.
25 (*Id.* at 2.) In the Order, Judge Moskowitz directed the parties “to meet with the assigned
26 magistrate judge to work out as many stipulations of fact as possible” and encouraged the
27 parties “to consult with the assigned magistrate judge to work out any problems in
28 preparation of the proposed pretrial order.” (*Id.* at 3.)

1 On January 29, 2020, counsel for the parties left a joint voicemail message with
2 Judge Burkhardt's chambers requesting the Court's assistance in resolving disputes
3 concerning the fact stipulations and proposed jury instructions in the parties' proposed
4 pretrial order. (ECF No. 690.) On February 6, 2020, the Court held a telephonic, counsel-
5 only Status Conference wherein each party's disputed fact stipulations were discussed.
6 (ECF No. 692.) During the Conference, Defendants ("Wakaya") took issue with the fact
7 that Youngevity had not disclosed to Wakaya what allegedly false statements it intended
8 to present to the jury in support of its Lanham Act claims for false or misleading
9 advertising. Wakaya argued that knowing exactly what false statements Youngevity
10 intends to present is critical to preparing the parties' fact stipulations and crafting
11 appropriate jury instructions. Youngevity objected to providing a specific list of statements
12 it would rely on during trial and argued that the task would be impossible. Youngevity
13 further argued that it had already identified which exhibits (more than 500) it intended to
14 use in support of its Lanham Act claims. On February 10, 2020, the Court held a second
15 telephonic, counsel-only Status Conference with the parties. (ECF No. 693.) Each party's
16 position on the issue remained the same.


17 Judge Moskowitz has directed this Court to address whether Youngevity must now
18 disclose to Wakaya the specific and allegedly false statements it intends to present to the
19 jury in support of its Lanham Act claims. Section 43(a) of the Lanham Act, 15 U.S.C.
20 § 1125(a), prohibits the use of false designations of origin, false descriptions, and false
21 representations in the advertising and sale of goods and services. *See Cleary v. News Corp.*,
22 30 F.3d 1255, 1259 (9th Cir. 1994). There are five elements of a false advertising claim
23 under the Lanham Act, the first element being "a false statement of fact by the defendant
24 in a commercial advertisement about its own or another's product." *Southland Sod Farms*
25 *v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997). Given that Youngevity will be
26 required to identify for the jury what false statements Wakaya made to satisfy the first
27 element of its Lanham Act claims, the Court determines that Youngevity should now be
28 required to disclose a specific list of those statements upon which it intends to rely at trial.

1 Doing so will facilitate the parties' trial preparation and will save judicial and litigation
2 resources.

3 Accordingly, no later than **February 21, 2020**, Youngevity shall provide Wakaya
4 with a document specifying every allegedly false statement it intends to use to satisfy the
5 "false statement of fact" requirement in the first element of a false advertising claim under
6 the Lanham Act. The document shall individually list the *specific statements* and shall not
7 reference general statements or categories of statements.

8 **IT IS SO ORDERED.**

9 Dated: February 13, 2020

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11 Hon. Jill L. Burkhardt
12 United States Magistrate Judge
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