

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ILLINOIS TOOL WORKS INC.,

Plaintiff,

v.

Case No: 8:17-cv-420-T-30AAS

BG PRODUCTS, INC.,

Defendant.

ORDER

THIS CAUSE came on for consideration upon the Report and Recommendation submitted by Magistrate Judge Amanda Arnold Sansone (Dkt. #64) and Plaintiff's Objections (Dkt. #65) filed thereto.

After careful consideration of the Report and Recommendation of the Magistrate Judge, the Objections, and in conjunction with an independent examination of the file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

Plaintiff's Objections predominantly focus on the legal standard; Plaintiff contends the Magistrate Judge improperly applied the applicable standard. The Court disagrees that the Magistrate Judge applied an incorrect standard. However, the Court sustains the Objections to the extent that the Court agrees that the record reflected that Defendant's tests did not adequately support the following statement: "*The dispersant in Wynn's Automatic*

Transmission Cleaner is present in such a low concentration that, after dilution inside a transmission, minimal or no cleaning would be done.” (Dkt. #64 at 18). Nonetheless, even if this statement is “false,” the Court agrees with the Magistrate Judge that, at this juncture, Plaintiff has not established the other elements of a false advertising claim, i.e., that the challenged statement, even if false, materially deceived potential consumers; or that Plaintiff has been, or is likely to be, injured as a result of the false advertising. The only record evidence of alleged deception was that one of Plaintiff’s customers received Defendant’s brochure. But that same customer continued to purchase Plaintiff’s products, rather than Defendant’s, so any alleged deception seems implausible at this stage.

The Court also agrees with the Magistrate Judge’s conclusion that Plaintiff has not established irreparable harm at this stage in the litigation.

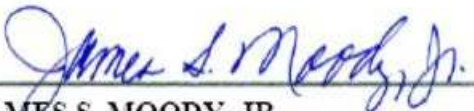
In sum, although the Court adopts the Magistrate Judge’s recommendation to deny Plaintiff’s preliminary injunction request, the Court emphasizes that a more developed record may establish Plaintiff’s false advertising claims.

ACCORDINGLY, it is therefore, ORDERED AND ADJUDGED:

1. The Report and Recommendation (Dkt. #64) of the Magistrate Judge is adopted, confirmed, and approved in all respects, and is made a part of this order for all purposes, including appellate review.

2. Plaintiff's Motion for Preliminary Injunction (Dkt. #5) is DENIED.

DONE and **ORDERED** in Tampa, Florida, this 13th day of July, 2017.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies Furnished To:
Counsel/Parties of Record