

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JL BEVERAGE COMPANY, LLC,
Plaintiff and Counter-Defendant,
v.
BEAM, INC., et al.,
Defendants and Counter-Plaintiffs.

Case No. 2:11-cv-00417-MMD-CWH

ORDER

(Plf.'s Motion for Reconsideration
– dkt. no. 111)
Plf.'s Motion to Stay Briefing on Defs.'
Motion to Dismiss Counterclaims Without
Prejudice and For Entry of Final Judgment
– dkt. no. 113)

I. SUMMARY

Before the Court are Plaintiff's Motion for Reconsideration (dkt. no. 111) and Plaintiff's Motion to Stay Briefing on Defendants' Motion to Dismiss its Counterclaims (dkt. no. 113). For the reasons stated below, both motions are denied.

II. BACKGROUND

The facts giving rise to this action have been described at great length in this Court's Order on Plaintiff's Motion for Preliminary Injunction. (Dkt. no. 98.) There, the Court denied Plaintiff's Motion for Preliminary Injunction, holding that Plaintiff was unlikely to succeed on the merits of its case. The parties subsequently filed cross-motions for summary judgment on Plaintiff's claims. The parties presented substantially the same facts and arguments in support of and against those Motions as they did in their Preliminary Injunction briefings. The Court granted Defendants' Motion, and entered

1 judgment in favor of Defendants on all of Plaintiff's claims. (Dkt. no. 107 at 9.) Plaintiff
2 now asks the Court to reconsider that determination.

3 **III. MOTION FOR RECONSIDERATION**

4 **A. Legal Standard**

5 Although not mentioned in the Federal Rules of Civil Procedure, motions for
6 reconsideration may be brought under Rules 59(e) and 60(b). Rule 59(e) provides that
7 any motion to alter or amend a judgment shall be filed no later than 28 days after entry
8 of the judgment. The Ninth Circuit has held that a Rule 59(e) motion for reconsideration
9 should not be granted "absent highly unusual circumstances, unless the district court is
10 presented with newly discovered evidence, committed clear error, or if there is an
11 intervening change in the controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma*
12 *GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting *389 Orange Street Partners v.*
13 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

14 Under Rule 60(b), a court may relieve a party from a final judgment, order or
15 proceeding only in the following circumstances: (1) mistake, inadvertence, surprise, or
16 excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5)
17 the judgment has been satisfied; or (6) any other reason justifying relief from the
18 judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000); see also *De Saracho v.*
19 *Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (noting that the district
20 court's denial of a Rule 60(b) motion is reviewed for an abuse of discretion).

21 A motion for reconsideration must set forth the following: (1) some valid reason
22 why the court should revisit its prior order; and (2) facts or law of a "strongly convincing
23 nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp.
24 2d 1180, 1183 (D. Nev. 2003). On the other hand, a motion for reconsideration is
25 properly denied when the movant fails to establish any reason justifying relief. *Backlund*
26 *v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (holding that a district court properly
27 denied a motion for reconsideration in which the plaintiff presented no arguments that
28 were not already raised in his original motion)). Motions for reconsideration are not "the

1 proper vehicles for rehashing old arguments,” *Resolution Trust Corp. v. Holmes*, 846 F.
2 Supp. 1310, 1316 (S.D. Tex. 1994) (footnotes omitted), and are not “intended to give an
3 unhappy litigant one additional chance to sway the judge.” *Durkin v. Taylor*, 444 F. Supp.
4 879, 889 (E.D. Va. 1977).

5 **B. Discussion**

6 Plaintiff argues that reconsideration is warranted for two reasons: first, in denying
7 Plaintiff’s Motion for Preliminary Injunction, the Court held that the *Sleekcraft* factors did
8 not overwhelmingly favor either party; and second, there remain issues of fact regarding
9 several of the *Sleekcraft* factors. The Court addresses each argument in turn.

10 **1. Whether the *Sleekcraft* Factors Favor Defendants**

11 Although the Court determined that “[t]his is not a case where the factors
12 overwhelmingly favor either party,” in their Motion for Reconsideration Plaintiff neglects
13 to mention that the Court held that the most important factors in the *Sleekcraft* analysis
14 here strongly favored Defendants. The Court held that:

15 the relative import of each *Sleekcraft* factor is case-dependent. The very
16 fact that this case involves similar products means that certain factors –
17 degree of care, marketing channels, proximity of goods – almost
18 automatically favor JL Beverage. In light of this, and given that JL
19 Beverage’s allegations center around the alleged similarity between the
20 parties’ use of ‘lips’ in their marks, the most important factor here is factor
21 three, similarity of the marks. In fact, “[t]he similarity of marks ‘has always
22 been considered a critical question in the likelihood-of-confusion
23 analysis.’” *M2 Software*, 421 F.3d at 1082. The marks at issue, both their
24 composite parts and when viewed as a whole, are not similar.

25 Thus the Court held that the most important factor in this case, factor 3, clearly
26 favored Defendants. This holding was not contradicted by the evidence presented in the
27 parties’ summary judgment briefings. No genuine issue of material fact was presented
28 to the Court that would merit a different result from the one reached in the Court’s
decision denying the preliminary injunction request. As such, the Court did not commit
clear error by granting summary judgment in Defendants’ favor.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Whether Issues of Fact Remain

Plaintiff also contends that there are several issues of material fact remaining, warranting reconsideration of the Court's Order. However, contrary to Plaintiff's assertions, the Court did not make subjective determinations concerning the evidence. Plaintiff is correct that regarding factor 4, in its Order on Plaintiff's Motion for Preliminary Injunction, the Court stated that later evidence garnered through further discovery might strengthen Plaintiff's evidence of actual confusion. But Plaintiff did not present any such evidence in support of or opposition to the cross-motions for summary judgment. The Court noted this at page 8 of its Order. (Dkt. no. 107 at 8.)

IV. MOTION TO STAY BRIEFING ON DEFENDANTS' MOTION TO DISMISS COUNTERCLAIMS WITHOUT PREJUDICE

Plaintiff also requests that the Court stay the briefing schedule on Defendants' Motion to Dismiss Counterclaims without Prejudice and for Entry of Final Judgment (dkt. no. 109) until deciding its Motion for Reconsideration. This Order disposes of the Motion for Reconsideration, and therefore Plaintiff's Motion is denied as moot. Plaintiff is to respond to the merits of Defendant's Motion to Dismiss within fourteen (14) days from the entry of this Order.

V. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration (dkt. No. 111) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Stay Briefing on Defendants' Motion to Dismiss Counterclaims without Prejudice and for Entry of Final Judgment (dkt. no. 113) is DENIED AS MOOT. Plaintiff's Response to Defendant's Motion to Dismiss is due within fourteen (14) days from the entry of this Order.

DATED THIS 14th day of June 2013.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE