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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHEMEON SURFACE TECHNOLOGY,
Plaintiff,

3:15-cv-00294-CLB

v.

ORDER

METALAST INTERNATIONAL, INC., et
al.,
Defendants.

11 Defendants David M. Semas (“Semas”) and Metalast International, Inc. (“MI-
12 INC”) (collectively referred to as “Defendants”), have filed an objection to the admission
13 of pre-release date conduct for the purposes of establishing (a) unclean hands as a
14 defense to the counterclaim for specific performance of the March 11, 2015 Settlement
15 Agreement, (b) to challenge the ownership of the Metalast word marks under any and all
16 registration numbers, and (c) to seek cancellation of any marks based upon alleged
17 fraud on the United State Patent and Trademark Office (“USPTO”). (ECF No. 599.)
18 Plaintiff Chemeon filed an opposition arguing that pre-release conduct remains relevant
19 and admissible at trial for a variety of reasons. (ECF No. 602.)

20 The court has thoroughly reviewed Defendants’ memorandum and Plaintiff’s
21 opposition. In addition, in deciding the issues presented in the objection and opposition,
22 the court has also thoroughly re-reviewed several prior orders, stipulations, transcripts,
23 and filings by the parties in this case, including the following: (1) Order granting the
24 dismissal with prejudice of Defendants’ counterclaims, (ECF No. 199); (2) Order denying
25 Defendants’ motion for partial summary judgment, (ECF No. 233); (3) Amended Order
26 granting, in part, and denying, in part, various summary judgment motions, (ECF No.
27 411); (4) Order granting in part, and denying, in part, motion for reconsideration of
28 amended order re: summary judgment, (ECF No. 425); (5) Order on Greg Semas’s

1 motion for summary judgment and standing re: cancellation of word marks, (ECF No.
2 463); (6) Trial brief, opposition and reply re: prevailing party for award of attorney's fees,
3 (ECF Nos. 513, 526, 530); (7) Transcript of October 31, 2019 hearing (ECF No. 537);
4 and, (8) the parties respective trial briefs, (ECF Nos. 586, 587, 590).

5 Having reviewed the above and considered thoroughly the parties' various
6 arguments, the court agrees with the arguments presented in Defendants' Bench
7 Memorandum in almost all respects and rejects Plaintiff's arguments. Therefore,
8 Defendants' objection as to the admission of pre-release date conduct is sustained, in
9 part, and overruled, in part.

10 Specifically, evidence of pre-release date conduct related to alleged fraudulent
11 conduct engaged in by Defendants in relation to obtaining the logo and word marks
12 directed at third parties, including but not limited to the USPTO, SEC investigation, IRS,
13 other investors or the like, is excluded from trial. In addition, any alleged fraudulent
14 conduct allegedly surrounding the Meiling's initial investments in Metalast, or the
15 Metalast related entities, is excluded from trial.

16 However, the court disagrees with Defendants' assertions that all pre-release
17 conduct is precluded by prior court orders or is otherwise irrelevant and must be
18 excluded from trial. Specifically, the court agrees that Plaintiff's defense of unclean
19 hands was not released by the settlement agreement and that some evidence of pre-
20 release conduct is directly relevant to Plaintiff's claim for "exceptional case" attorneys'
21 fees. Therefore, the court finds that the following evidence is relevant and admissible at
22 trial: (1) pre-release conduct related to the events leading up to and surrounding the
23 receivership action starting in early 2013, (2) pre-release conduct related to and
24 surrounding the Semas' bankruptcy and adversary proceeding, (3) evidence and
25 testimony related to the formation and intent surrounding the settlement agreement, and
26 (4) post-settlement conduct. All of this evidence is directly relevant to Plaintiff's unclean
27 hands defense, as well as the Plaintiff's request for "exceptional case" attorneys' fees.
28 Therefore, the presentation of evidence and testimony related to pre-release conduct

1 starting from approximately 2013, involving the events surrounding the 2013 receivership
2 action, onward will be admissible and permissible during trial.

3 The court will not hear any further argument or accept any further briefing on
4 these issues, and the parties are advised to adjust their trial presentations accordingly.

5 **IT IS SO ORDERED.**

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7 **DATED:** November 11, 2020

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UNITED STATES MAGISTRATE JUDGE

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