IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE PENNSYLVANIA STATE UNIVERSITY,

No. 4:21-CV-01091

Plaintiff,

(Chief Judge Brann)

v.

VINTAGE BRAND, LLC; SPORTSWEAR, INC., d/b/a PREP SPORTSWEAR; CHAD HARTVIGSON; ERIK HARTVIGSON; and MICHELLE YOUNG,

Defendants.

ORDER

FEBRUARY 6, 2024

In accordance with the accompanying Memorandum Opinion, IT IS

HEREBY ORDERED that:

- 1. Vintage Brand's *Daubert* motion (Doc. 93) is **GRANTED** and David Franklyn is prohibited from testifying at trial regarding Survey 1;
- 2. Penn State's *Daubert* motion (Doc. 95) is **DENIED**;
- 3. Vintage Brand's motion to strike (Doc. 135) is **GRANTED** as to Paragraphs 1, 5, and 114 of the SUMF, and Paragraph 15 and the first sentence of Paragraph 6 of Petulla's Declaration, but is **DEFERRED** in all other respects;
- 4. Penn State's motion to strike (Doc. 141) is **GRANTED** as to Paragraphs 16 and 25 of Chad Hartvigson's Declaration, but **DENIED** in all other respects;

- 5. Vintage Brand's second motion to strike (Doc. 159) is **GRANTED** to the extent that the sentence "[t]he image on the left was most likely sourced from a decal created by a third party around the early 1950s" is stricken from Paragraph 5 of Hartvigson's Supplemental Declaration, but is **DENIED** in all other respects;
- 6. Vintage Brand's motion for summary judgment (Doc. 110) is **GRANTED** in part and **DENIED** in part:
 - a. The motion is granted as to Counts 2, 3, 4, 5, and 6 of the second amended complaint, and judgment is entered in Vintage Brand's favor as to those counts; and
 - b. The motion is denied as to Counts 1 and 7 of the second amended complaint, and as to Counterclaim One.
- 7. Penn State's motion for summary judgment (Doc. 113) is **GRANTED** in part and **DENIED** in part;
 - a. The motion is granted as to Vintage Brand's Affirmative Defenses Seven and Eight, but only as to incontestable registrations; and
 - b. The motion is denied in all other respects.
- 8. The Court will schedule a telephonic status conference by separate Order.

BY THE COURT:

<u>s/Matthew W. Brann</u>Matthew W. BrannChief United States District Judge