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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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10 CASCADE YARNS, INC., a Washington
corporation,

11 Plaintiff,

12 v.

13 KNITTING FEVER, INC., a New York
14 corporation, et al.,

15 Defendants.

CASE NO. C10-861RSM

ORDER ON MOTION FOR
RECONSIDERATION

16
17 This matter is before the Court for consideration of a motion for partial reconsideration filed by
18 plaintiff Cascade Yarns, Inc. (“Cascade”). Dkt. # 900. Cascade requests that the Court reconsider its
19 Order dated October 29, 2012, dismissing Cascade’s claims for unfair competition, as to two specific
20 yarns. Dkt. # 886. The Court directed defendants to file a response to the motion, and the matter has
21 now been fully briefed and is ready for consideration. For the reasons set forth below, plaintiff’s motion
22 shall be denied.

23 DISCUSSION

24 Motions for reconsideration are disfavored. The Court “will ordinarily deny such motions in the
25 absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority
26 which could not have been brought to its attention earlier with reasonable diligence.” Local Rule CR
27 7(h)(1). In the Order which Cascade seeks to challenge, the Court dismissed Cascade’s Lanham Act
28 and other claims for lack of evidence of mislabeling, following the disqualification of Cascade’s expert

1 on fiber testing. Order on Cross Motions for Summary Judgment, Dkt. # 886. In moving for
2 reconsideration, Cascade contends that “it was manifest error for the Court to grant summary judgment
3 of Cascade’s Lanham Act claims without considering evidence in the record (other than fiber content
4 testing evidence) demonstrating the mislabeling of *Leche* and *Silky Wool*.” Cascade’s Motion for Partial
5 Reconsideration, Dkt. # 900, p. 2. The two yarns shall be addressed separately.

6 For independent evidence regarding the mislabeling of *Leche* yarn, Cascade points to the earlier
7 Order on Motion re: Continuing Guarantees (Dkt. # 612), arguing that “Cascade submitted
8 evidence—and this Court earlier recognized—that *Leche* contained no silk, let alone the 10% claimed.”
9 Dkt. # 900, p. 3. The earlier Order addressed a discrepancy in fiber content listed on packing slips and
10 invoices for several shipments of *Leche* yarn which were obtained by Cascade during discovery. Some
11 matched the fiber content on the label and some did not. According to exhibits attached to the Fourth
12 Amended Complaint, filed July 12, 2011, the Leché label states the fiber composition as 40% Extrafine
13 Merino Wool, 30% Microfiber, 20% Milk Protein, and 10% Silk (“40-30-20-10”). Order, Dkt. # 612, p.
14 2. On a shipping document printed in Italian and dated August 5, 2010, the fiber content of *Leche* yarn
15 is listed as 50% Merino Wool, 30% Microfiber, and 20% Milk (“50-30-20-0”); there is no mention of
16 silk. *Id.*, p. 3. On an invoice dated August 2, 2010, which the Court noted “appears to be an invoice for
17 the same shipment,” the fiber content for the *Leche* yarn is stated as 40% Merino, 30% Microfiber, 20%
18 Milk Fiber, and 10% Silk, or the same 40-30-20-10 content listed on the *Leche* label. *Id.*

19 In ruling on Cascade’s motion, the Court stated,

20 Although the *Leche* label presented by Cascade is undated, and thus cannot be tied to any
21 particular shipment, the discrepancy between the 40-30-20-10 fiber content on the label
22 and the 50-30-20-0 fiber content on numerous invoices and packing slips produced by Jet
23 Air and Emmepieffe raises a genuine concern regarding the Continuing Guarantee filed by
24 Knitting Fever. Accordingly, Cascade’s motion shall be GRANTED IN PART.

25 Order re: Motion for Continuing Guarantees, Dkt. # 612, p. 5. Contrary to Cascade’s assertion, this
26 ruling does not constitute independent evidence that the *Leche* yarn was in fact mislabeled. As the
27 Court noted, there was no evidence tying the packing slips and invoices to an actual label. While the
28 discrepancy between a label, the invoices, and packing slips “raise[d] a genuine concern,” this did not
constitute a finding of fact that any *Leche* label was false.

1 Moreover, Cascade’s motion regarding the continuing guarantee was based not only on the
2 discrepancy between labels, packing slips, and invoices, but also on the now-excluded fiber tests. In
3 introducing the motion, Cascade stated,

4 One of the invoices was sent to KFI and lists the fiber composition consistent with Professor
5 Langley’s report. The other invoice was provided to the customs broker for Homeland
6 Security. The fiber content of *Leche* identified on this invoice is inconsistent with Professor
7 Langley’s findings and the invoice sent to KFI but identical to the composition listed on the
8 label itself.

9 Cascade’s Motion to Modify Order re: Continuing Guarantees, Dkt. # 406, p. 2. Cascade asserted that
10 the invoice stating that the *Leche* yarn contains 50% wool and no silk was “consistent with the fiber
11 analysis conducted by Professor Langley which found *Leche* to be 48.8% wool and 0% silk. Dkt. No.
12 322-55.” *Id.*, p. 3. Cascade’s citation is to the Langley laboratory fiber test report which was later
13 excluded, although the exhibit number provided by Cascade is incorrect. The cited exhibit shows that
14 the Langley laboratory reported the fiber content of *Leche* as 51.2% Acrylic and 48.8% Wool. Dkt. #
15 322-14, p. 2.

16 The Court’s Order acknowledged Cascade’s argument, noting that

17 The discrepancy between the fiber content listed for the *Leche* yarn on the Emmepieffe
18 packing slip and the invoice led to the filing of this motion. Cascade asserts that this
19 discrepancy demonstrates that the yarn is mislabeled and that the actual content is what
20 the Emmepieffe packing slip stated (and which the laboratory test found, assuming that
21 microfiber and milk fiber are both included in the “acrylic” component measured by the
22 laboratory).

23 Order on Motion re: Continuing Guarantees, Dkt. # 612, pp 3-4. The Court thus acknowledged that
24 Cascade’s argument was bolstered by the fiber test results, and their agreement with the fiber content as
25 listed on the Emmepieffe packing slip. Cascade may not now point to this Order as evidence,
26 independent of fiber testing, that the *Leche* yarn was mislabeled. Without the fiber test component of
27 Cascade’s argument, the only evidence in the record is that there were two different versions of the fiber
28 content of *Leche* found in various packing slips and invoices. As either one of these versions could have
been correct, this discrepancy does not alone constitute evidence of mislabeling. Cascade’s motion for
reconsideration as to the *Leche* yarn shall be denied.

 With respect to *Silky Wool*, yarn, Cascade asserts that “Cascade submitted evidence other than

1 fiber testing demonstrating that *Silky Wool* contained undisclosed nylon fibers.” Motion for Partial
2 Reconsideration, Dkt. # 900, p. 4. This argument refers to “admissions” by defendant Knitting Fever,
3 Inc., (“KFI”) in its answer. Specifically, KFI stated,

4 108. Answering Defendants admit that in the spring of 2008 Robert A. Dunbabin, Jr.
5 telephoned Mr. Elalouf alerting him to the discovery that the product called Elisabeth
6 Lavold Silky Wool contained 20% or more of the synthetic fiber Nylon yet was labeled
7 65% wool and 35% silk, that Mr. Elalouf volunteered that the product was sourced from
8 VVG, that Mr. Dunbabin expected him to correct this mislabeling, that Mr. Elalouf
9 responded by asking if Cascade wanted KFI, Inc. to test all of its yarns, and that Mr.
10 Dunbabin responded by stating that appropriate testing should be undertaken by KFI,
11 Inc. Answering Defendants deny the balance of the allegations in paragraph 108 of the
12 Fourth Amended Complaint.

13 109. Answering Defendants admit that less than two weeks later Mr. Elalouf, having
14 confirmed that the product was mislabeled as a result of an unannounced change in the
15 formulation of a component of the yarn by a supplier to the yarn manufacturer, telephoned
16 Mr. Dunbabin and stated that the labeling issue concerning Elisabeth Lavold Silky Wool
17 would be publicly corrected, and that KFI, Inc. informed stores that what had been sold to
18 them as a natural fiber was actually a synthetic fiber blend. Answering Defendants deny the
19 balance of the allegations in paragraph 109 of the Fourth Amended Complaint.

20 Defendants’ Answer to Amended Complaint, Dkt. # 327. Cascade contends that these answers
21 constitute evidence, independent of fiber tests, that *Silky Wool* was in fact mislabeled. Cascade
22 previously moved for judgement on the pleadings on the basis of this same contention, and the motion
23 was denied. Dkt. # 861.

24 In responding to Cascade’s motion, defendants note that Cascade itself also admitted that a
25 number of its own yarns were mislabeled. Defendants argue that

26 to the extent Defendants’ admission that *Silky Wool* was mislabeled is sufficient to create
27 an issue of fact as to falsity, the Court should also vacate its ruling with respect to Cascade’s
28 220, 128, and 109 Tweed, Baby Folie, Bouton Colour, Eden, Sissi, Inspire, Bulky Leisure
and Bulky Leisure HD, Mohair Kiss, Etoile, Fiordo, and King Cole Luxury Mohair.


KFI Defendants’ Response, Dkt. # 924, p. 6.

While there is some logic behind defendants’ proposal, the Court declines to recognize what is in
essence an untimely motion for reconsideration by defendants. Instead, the Court notes that the
“admissions” by both parties were based on fiber test results which have subsequently been excluded
from consideration as unreliable. The Court therefore cannot accept either party’s statements with

1 respect to their own yarns as evidence that the yarns were in fact mislabeled.

2 Cascade's motion for reconsideration (Dkt. # 900) is accordingly DENIED. The KFI
3 defendants' motion to strike certain statements in Cascade's reply (Dkt. # 927) is also DENIED.

4 DATED this 11th day of April 2013.



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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE
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