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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANOVA APPLIED
ELECTRONICS, INC.,

Plaintiff,

v.

PERCH ACQUISITION CO 1 LLC,
et al.,

Defendants.

CASE NO. C23-0843JLR

ORDER

I. INTRODUCTION

Before the court is Anova Applied Electronics, Inc.’s (“Anova”) renewed *ex parte* motion for injunctive relief to enjoin the distribution of certain products that Anova alleges infringe upon its patent and trademarks. (Mot. (Dkt. # 20).) Although most Defendants have received notice of the motion (*see* 7/24/23 Billick Decl. (Dkt. # 25 at 7-11)), none have appeared in this case or responded to the motion (*see* Dkt.). The court has considered Anova’s motion, its filings in support of its motion, the balance of the

1 record, and the governing law. Being fully advised,¹ the court DENIES Anova’s motion
2 for injunctive relief.

3 II. BACKGROUND

4 Anova asserts that it is “a global leader in kitchen appliances and accessories” and
5 that its Precision Cooker sous vide² cooking device “has become the best-selling sous
6 vide device on the market today.” (Compl. (Dkt. # 1) ¶ 16.) Anova holds United States
7 Reissue Patent No. RE49,267 (the “RE267 Patent”) that “relates generally to food
8 cooking devices, and more specifically, to precision temperature control water heaters
9 and water pump circulator appliances having an alarm system, or alert system, or both”
10 and covers the Precision Cooker. (Compl. ¶ 17; *see id.*, Ex. 1 (“RE267 Patent”).) Anova
11 also holds two registered trademarks in its Precision brand: Reg. No. 4,989,116 for
12 “PRECISION” in connection with constant temperature immersion circulators for use in
13 cooking and Reg. No. 6,392,242 for “PRECISION” in connection with sous vide
14 machines and electric sous vide cookers (together, the “PRECISION Marks”). (Compl.
15 ¶¶ 18-19; *see id.*, Exs. 2-3 (registration certificates).)

16 This case arises from alleged infringements of Anova’s patent and trademarks by
17 Defendants Perch Acquisition Co 1 LLC d/b/a “Sousvide Art” (“Sousvide Art”); Wedge
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19 ¹ Although Anova has requested oral argument (*see* Mot. at 1), the court finds that oral
20 argument would not be helpful to its resolution of the motion, *see* Local Rules W.D. Wash. LCR
7(b)(4).

21 ² “The ‘sous vide’ technique of cooking involves cooking ingredients in a vacuum-sealed
22 pouch submerged in water, typically at a long time at a low temperature.” (Compl. (Dkt. # 1)
¶ 15.)

1 and Wagon LLC (“Wedge and Wagon”); Dmytro Makarov; Iryna Voloshyna;
2 jinantaizhuofurundianzishangmaoyouxiangongsi, doing business on Amazon.com as
3 “Lekoza Direct” (“Lekoza”); Maksym Mosinian, doing business on Amazon.com as
4 “Garnease” (“Garnease”); HONG KONG XING HUA TECHNOLOGY CO., LIMITED,
5 doing business on Amazon.com as “Upesitom” (“Upesitom”); and dongguanshi
6 yingsheng keji youxiangongsi, doing business on Amazon.com as “Caukins” (“Caukins”)
7 (together, “Defendants”). (*See generally* Compl.) According to Anova, Defendants
8 infringed its patent and trademarks by manufacturing, importing, offering for sale, and
9 selling “certain ‘Sousvide Art Precision Cooker’ products” (the “Accused Products”) in
10 the United States. (*Id.* at 2.) Specifically, Anova alleges claims against Defendants for
11 infringement of the RE267 Patent and the PRECISION Marks; unfair competition, false
12 designation of origin, and false and misleading representation in violation of Section
13 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); dilution in violation of Section 43(c) of
14 the Lanham Act, 15 U.S.C. § 1125(c); trademark infringement and unfair competition in
15 violation of Washington common law; and violation of the Washington Consumer
16 Protection Act, ch. 19.86 RCW. (*Id.* ¶¶ 27-92.) Anova seeks, among other relief,
17 preliminary and permanent injunctions enjoining Defendants from infringing the RE267
18 Patent and PRECISION Marks; damages; treble damages for willful infringement; and
19 attorney’s fees and costs. (*Id.* at 26-28.)

20 On June 20, 2023, Anova filed an *ex parte* motion for a preliminary injunction in
21 which it asked the court to order Defendants “to immediately cease advertising, offering,
22 selling, and importing . . . in the United States” the Accused Products. (6/20/23 Mot.

1 (Dkt. # 14.) The court denied the motion on June 22, 2023. (6/22/23 Order (Dkt. # 18).)
2 The court explained that it “may issue a preliminary injunction only on notice to the
3 adverse party” and instructed Anova that it could either renew its motion with proof that
4 it had given notice to Defendants pursuant to Federal Rule of Civil Procedure 65(a)(1) or
5 file a motion for a temporary restraining order (“TRO”) without notice pursuant to
6 Federal Rule of Civil Procedure 65(b) and Local Rules W.D. Wash. LCR 65(b). (*Id.*
7 (quoting Fed. R. Civ. P. 65(a)(1)).)

8 Anova has now filed a renewed motion seeking (1) a preliminary injunction
9 against Defendants Sousvide Art, Wedge and Wagon, Mr. Makarov, Ms. Voloshyna,
10 Garnease, and Lekoza and (2) a TRO against Upesitom and Caukins. (*See generally*
11 *Mot.*) It again asks the court to “order all Defendants to immediately cease advertising,
12 offering, selling, and importing” the Accused Products in the United States, and it states
13 that it is prepared to post a bond pursuant to Federal Rule of Civil Procedure 65(c). (*Id.*
14 at 19.) Anova represents that (1) it has given notice of this motion for preliminary
15 injunction to all of the Defendants except Upesitom and Caukins; (2) Sousvide Art has
16 waived service of process; (3) Wedge and Wagon has been served through its registered
17 agent; and (4) Anova has initiated the process of serving Upesitom and Caukins via the
18 Hague Convention. (*See generally* 7/24/23 Report (Dkt. # 25 at 1-6); 7/24/23 Billick
19 Decl. (Dkt. # 25 at 7-11).) So far, however, none of the Defendants have appeared in this
20 action. (*See* Dkt.)
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III. ANALYSIS

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2 Federal Rule of Civil Procedure 65 empowers the court to issue preliminary
3 injunctions and TROs. Fed. R. Civ. P. 65. Preliminary injunctions and TROs are
4 “extraordinary remed[ies] never awarded as of right.” *Winter v. Nat. Res. Def. Council,*
5 *Inc.*, 555 U.S. 7, 24 (2008); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).
6 The court applies the same standards when evaluating motions for preliminary
7 injunctions and motions for TROs. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,
8 240 F.3d 832, 839 n.7 (9th Cir. 2001). A party seeking these forms of injunctive relief
9 “must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer
10 irreparable harm in the absence of preliminary relief, that the balance of equities tips in
11 [its] favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. The
12 Ninth Circuit also employs a sliding scale approach under which “‘serious questions
13 going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can
14 support issuance of a preliminary injunction, so long as the plaintiff also shows that there
15 is a likelihood of irreparable injury and that the injunction is in the public interest.” *All.*
16 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). For the reasons set
17 forth below, the court concludes that Anova has not established a likelihood that it will
18 suffer irreparable harm in the absence of preliminary relief and DENIES Anova’s motion
19 for injunctive relief.

20 A plaintiff seeking an injunction “must make a clear showing that it is at risk of
21 irreparable harm, which entails showing a likelihood of substantial and immediate
22 irreparable injury.” *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir.

1 2012); *see also Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1251
2 (9th Cir. 2013). The plaintiff must demonstrate that: (1) “absent an injunction, it will
3 suffer irreparable harm”; and (2) “a sufficiently strong causal nexus relates the alleged
4 harm to the alleged infringement.” *Apple Inc.*, 695 F.3d at 1374. The movant “must
5 proffer evidence sufficient to establish a likelihood of irreparable harm”; it cannot rely on
6 “unsupported” or “conclusory” assertions of harm. *Herb Reed Enters.*, 736 F.3d at
7 1250-51. It must also establish that remedies available at law, such as monetary
8 damages, are inadequate to compensate for the harm caused by continued alleged
9 infringement. *Id.* at 1250; *see Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930
10 (Fed. Cir. 2012) (“[T]he irreparable harm inquiry seeks to measure harms that no
11 damages payment, however great, could address.”).

12 Anova asserts that absent an injunction and TRO, it will “continue to lose market
13 share and reputation as an industry leader.” (Mot. at 17.) It reasons that because
14 households rarely purchase multiple sous vide devices, “when a person purchases a lower
15 cost competing device that infringes Anova’s intellectual property, Defendants gain an
16 unfair advantage by effectively removing that person from the potential buyer . . . pool
17 until a need to buy a new sous vide arises.” (*Id.*) It also asserts that “regardless of the
18 volume sold of Accused Products, Anova losing control over its PRECISION Marks is
19 sufficient basis to find the likelihood of irreparable harm.” (*Id.* (citing *2Die4Kourt v.*
20 *Hillair Capital Mgmt., LLC*, 692 F. App’x 366, 369 (9th Cir. 2017)).)

21 Anova does not, however, present sufficient evidence to support its assertions of
22 irreparable harm. First, the only evidence Anova cites in its discussion of harm is an

1 exhibit to its complaint comprised of screenshots of Defendants’ Amazon storefronts and
2 product listing pages showing that the alleged infringing products had “garnered a
3 substantial volume of reviews on Amazon.com.” (Mot. at 17 (citing Compl., Ex. 5 at 3
4 (screenshot showing that the Sousvide Art Precision Cooker Kit has received 4,698
5 reviews)).) The mere fact that Amazon customers have reviewed Defendants’ products,
6 however, is not enough to support a finding that Anova will be irreparably harmed absent
7 an injunction. Second, contrary to Anova’s assertion that “losing control” over its
8 PRECISION Marks is enough to establish a likelihood of irreparable harm (*id.*), the
9 Ninth Circuit has made clear that a finding of irreparable harm cannot be based “solely
10 on a strong case of trademark infringement;” rather, the movant must establish
11 irreparable harm with evidence. *Herb Reed Enters.*, 736 F.3d at 1251 (reasoning that
12 inferring irreparable harm from a strong case of infringement “collapses the likelihood of
13 success and the irreparable harm factors” of the preliminary injunction test). Finally,
14 even if Anova could establish its claimed harms, it does not address, let alone provide
15 evidentiary support for, the requirement that monetary damages be inadequate to
16 compensate those harms. (*See generally* Mot.) Because Anova’s assertions of harm are
17 merely conclusory statements without evidentiary support, the court finds that Anova has
18 not met its burden to establish that it is likely to suffer irreparable harm in the absence of

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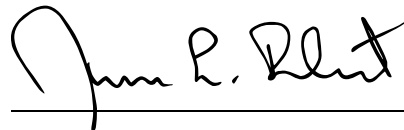
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1 an injunction. Accordingly, the court DENIES Anova's renewed motion for injunctive
2 relief.³

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court DENIES Anova's renewed *ex parte* motion
5 for injunctive relief (Dkt. # 20).

6 Dated this 11th day of August, 2023.

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9 JAMES L. ROBART
10 United States District Judge

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22 ³ Because Anova fails to demonstrate irreparable harm, the court need not address the other factors of the preliminary injunction test. *See, e.g., Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 982 (9th Cir. 2011).