

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

S.C. JOHNSON & SON, INC.,

Plaintiff-Counterclaim Defendant,

v.

Case No. 11-C-861

**NUTRACEUTICAL CORPORATION and
NUTRAMARKS, INC.,**

Defendants-Counterclaimants.

ORDER

The Defendants, Nutraceutical Corporation (“NutraCeutical”) and NutraMarks, Inc. (“NutraMarks”), filed an expedited non-dispositive motion pursuant to Fed. R. Civ. P. 62(b)(3) seeking a stay of the August 29, 2014, injunction, until 30 days after the Court’s ruling on the motion for relief pursuant to Fed. R. Civ. P. 59 that they intend to file on September 26, 2014. Plaintiff S.C. Johnson (“SCJ”) opposes the motion.

Rule 62(b)(3) provides that “[o]n appropriate terms for the opposing party’s security, the court may stay the execution of a judgment . . . pending disposition of any of the following motions: . . . under Rule 59, for a new trial or to alter or amend a judgment.” “The district court may only stay execution of the judgment pending the disposition of certain post-trial motions or appeal if the court provides for the security of the judgment creditor.” *Peacock v.*

Thomas, 516 U.S. 349, 359 (1996).

The Defendants do not intend to file their Rule 59 motion until Friday, September 26, 2006. The effective date of the injunction is Sunday, September 28, 2014. The anticipated Rule 59 motion filing date does not provide the Court with sufficient time to decide whether to stay the injunction before the Defendants must comply with its provisions.

Thus, if the Defendants want the Court to consider the requested stay, they must file their Rule 59 motion no later than Wednesday, September 24, 2014. By the stated deadline, SCJ must also file a statement indicating appropriate terms for its security, if one or both of the paragraphs of the injunction¹ are stayed.

¹The injunction states:

The Defendants and their agents, servants, employees and attorneys and all persons in active concert or participation with them or acting for, with, by, through or under them, are permanently enjoined from counterfeiting and infringing SCJ's BUG-OFF® Mark, from unfair competition with SCJ and from falsely designating the origin of the SCJ goods; and,

No later than September 28, 2014, the Defendants must deliver up for destruction to SCJ all unauthorized products and/or advertisements in its possession or under its control bearing the infringing BUG OFF mark or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, pursuant to 15 U.S.C. § 1118.

(Court's Aug. 29, 2014, Decision and Order, 39) (ECF No. 89.)

Dated at Milwaukee, Wisconsin, this 18th day of September, 2014.

SO ORDERED:


HON. RUDOLPH T. RANDA
U.S. District Judge