

1 infringement.

2 In its order, the Court held that products produced by PPI and sold by Charlotte Russe did
3 infringe upon Plaintiff's '296 Patent. The only issues remaining after the Court's order are
4 equitable defenses potentially available to PPI and damages. However, the order made clear that
5 the equitable defenses available to PPI were not available to Charlotte Russe. Finally, the Court
6 denied Charlotte Russe's Motion for Summary Judgment, rejecting its invalidity arguments based
7 on obviousness and inventorship.

8 In order to obtain a preliminary injunction, Plaintiff must first show that it is likely to
9 succeed on the merits. Given the Court's prior finding of infringement, this requirement has been
10 satisfied. It has already been determined that Charlotte Russe sold products which infringed upon
11 the '296 Patent. It is therefore likely that Plaintiff will succeed at trial against Charlotte Russe. In
12 its Opposition to the Motion for Preliminary Injunction, Defendant argues that it is likely to
13 succeed on the merits because it has an equitable estoppel defense and the '296 Patent is invalid
14 due to obviousness and inventorship issues. Defendant's attempts to re-litigate issues previously
15 decided in the summary judgment order are ineffective. This Court held that the Charlotte Russe's
16 equitable estoppel claims fail because it failed to show any reliance on any conduct of Bragel and
17 its invalidity arguments have "no merit". Accordingly, Plaintiff has successfully shown that it is
18 likely to succeed on the merits.

19 Next, Plaintiff must show that it will suffer irreparable harm if it is not granted a
20 preliminary injunction. Patents give their holders a fundamental right to exclude others from
21 using their invention. *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1149 (Fed. Cir.
22 2011). Plaintiff argues that allowing Charlotte Russe to continue to sell infringing products will
23 cause it irreparable harm in the form of lost sales, decreased market share, and loss of goodwill.
24 As a competitor, Charlotte Russe is depriving Bragel and its retail customers of sales by selling a
25 product which infringes Plaintiff's patent. Furthermore, Bragel has documented the lower quality
26 and manufacturing issues with the infringing products. By selling products which are difficult to
27 distinguish in appearance, but a lower quality than Bragel's product, Charlotte Russe is eroding
28 consumer confidence in Bragel's goodwill.

1 In its Opposition, Charlotte Russe repeatedly argues that Bragel has waited too long to file
2 its motion for preliminary injunction. Indeed, post-summary judgment is later than a typical
3 motion for preliminary injunction. However, Plaintiff has made a sufficient showing to justify
4 such delay. Furthermore, “[t]he period of delay exercised by a party prior to seeking a preliminary
5 injunction in a case involving intellectual property is but one factor to be considered by a district
6 court in its analysis of irreparable harm.” *Hybritech Inc. v. Abbott Labs*, 849 F.2d 1446, 1457
7 (Fed. Cir. 1988). This Court’s calendar made it necessary to delay the scheduled trial date. As of
8 the time of this order, the equitable issues are set for trial in April 2017 with the remaining jury
9 issues to follow. This delay has required Plaintiff to seek an injunction to prevent itself from
10 suffering irreparable harm until such time as its case may be finally resolved. This Court does not
11 find any delay on Plaintiff’s part to be unreasonable; it has thus far pursued its case diligently.
12 Accordingly, Plaintiff has sufficiently shown that it will be irreparably harmed without the
13 imposition of a preliminary injunction.

14 Plaintiff has also shown that the balance of equities support a preliminary injunction. By
15 selling the infringing products, Charlotte Russe will be denying Bragel’s retail customers of sales.
16 There is a strong likelihood of success on the merits, as discussed above, which further weighs the
17 equitable scales in favor of Plaintiff. Finally, any harm to Charlotte Russe would only result from
18 it selling an infringing product. Such harm can only be attributed to Charlotte Russe whereas
19 Bragel is harmed due exclusively to Defendant’s conduct.

20 Lastly, it would be in the public interest to impose a preliminary injunction. While the
21 public interest consideration is not always intertwined with a likelihood of success on the merits,
22 “absent any other relevant concerns, . . . the public is best served by enforcing patents that are
23 likely valid and infringed.” *Abbot Labs. v. Andrx Pharms., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir.
24 2006). Defendant argues that the public will be harmed by Charlotte Russe being enjoined from
25 selling its infringing products because consumers will be forced to buy Bragel’s more expensive
26 product. This consumer interest cannot outweigh the property rights and patent protections of
27 Bragel’s invention. The short-term gain that consumers may enjoy from denying the injunction in
28 this case cannot defeat the long-term protections and incentives underlying patent law.

Panties Plus, Inc. v. Bragel International, Inc.

IPR 2017-00044

Patent Owner Exhibit 2015

Page 3 of 4

1 Having met all of the requirements for a preliminary injunction, all that remains to be
2 determined is the bond requirement. Federal Rule of Civil Procedure 65 requires the imposition of
3 a bond when granting a preliminary injunction to protect the enjoined party in the event that the
4 injunction is later reversed. Plaintiff's suggested bond requirement of \$92,919 is sufficient to
5 protect Defendant in the event that the preliminary injunction is overturned at a later date

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Preliminary Injunction is
7 GRANTED as follows:

8 Defendant Charlotte Russe and each of its officers, directors, stockholders, owners, agents,
9 representatives and affiliates, and all those acting in concert or privity with Defendant
10 Charlotte Russe who receive actual notice of this Order by personal service or otherwise,
11 are restrained and enjoined from making, using, selling or offering for sale the accused Oh
12 Baby . . . Strapless, Backless Self Adhesive Silicone Bra, the lace Silicone Fashion Bra,
13 and the microfiber Silicone Fashion Bra.

14 **IT IS HEREBY FURTHER ORDERED** Plaintiff shall post a bond of \$92,919 as
15 security.

16 Dated: December 5, 2016.



17
18
19 MANUEL L. REAL
20 UNITED STATES DISTRICT JUDGE

21 CC: FISCAL
22
23
24
25
26
27
28