

NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRAGEL INTERNATIONAL, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STYLES FOR LESS, INC., et al., )  
 )  
 Defendants. )  
 )  
 )  
 )

CASE NO. SACV 15-1756-R  
  
ORDER GRANTING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION

Before this Court is Bragel International, Inc.'s Motion for Preliminary Injunction (Dkt. No. 154), which was filed on October 24, 2016. Having been thoroughly briefed by both parties, this court took the matter under submission on November 15, 2016.

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In order to obtain a preliminary injunction, a Plaintiff must show (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tip in its favor, and (4) that an injunction is in the public interest. *Id.* at 20

Plaintiff alleged one count of patent infringement against Defendant Styles For Less, Inc. In September, this Court granted Plaintiff's Motion for Summary Judgment (Dkt. No. 99) as to

1 infringement.

2 In its order, the Court held that products produced by PPI and sold by Styles for Less 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 Styles for Less. Finally, the Court  
6 denied Styles for Less'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 Styles for Less sold products which infringed upon  
11 the '296 Patent. It is therefore likely that Plaintiff will succeed at trial against Styles for Less. 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 Styles for Less'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 Styles for Less 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, Styles for Less 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, Styles for Less is eroding  
28 consumer confidence in Bragel's goodwill.

1 In its Opposition, Styles for Less 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, Styles for Less 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 Styles for Less would only result from  
18 it selling an infringing product. Such harm can only be attributed to Styles for Less 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 Styles for Less 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 2016**

**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 \$8,303 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 Styles for Less and each of its officers, directors, stockholders, owners, agents,  
9 representatives and affiliates, and all those acting in concert or privity with Defendant  
10 Styles for Less 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 \$8,303 as security.

15  
16 Dated: December 2, 2016.



17  
18  
19 MANUEL L. REAL  
20 UNITED STATES DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28