USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/30/14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERITAGE OF PRIDE, INC.,

Plaintiff,

-against-

No. 14 Civ. 4165 (CM)

MATINEE NYC, INC., VOSS NYC GROUP CORP., JAKE RESNICOW, and BRANDON VOSS,

Defendants.

MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION

McMahon, J.:

Defendants have moved for reconsideration of this Court's June 20, 2014 opinion granting Heritage's motion for a preliminary injunction (ECF No. 33). The motion for reconsideration is denied *sua sponte* and without any need for briefing.

Defendants offer two reasons why this Court should reconsider its preliminary injunction, neither of which deserves much discussion. First, Defendants rightly point out that the standard for a preliminary injunction requires a showing of a "substantial likelihood of success on the merits." *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (internal quotation marks omitted). Thus, Defendants argue, this Court's preliminary injunction opinion is suspect because the Court concluded in its Lanham Act discussion that Heritage had "demonstrated a likelihood—not, perhaps, an overwhelming likelihood, but a likelihood—of success in establishing that its marks carry secondary meaning." Op. at 37-38. But what Defendants ignore is that the Lanham Act section of the Court's preliminary injunction opinion

was *entirely unnecessary to its disposition*. Although Heritage might not have shown a "substantial" likelihood of success on its Lanham Act claim, principally because the secondary meaning question was a close one, it *did* show an overwhelming likelihood of success on its state-law unfair competition claim, which required no such showing of secondary meaning.

Second, Defendants question this Court's factual findings on the issue of irreparable harm. But nowhere do Defendants assert (indeed, on page one of their memorandum, they explicitly deny) that they have discovered any new evidence that was not previously available at the time of the preliminary injunction hearing last week; instead, they simply repeat arguments that the Court has already rejected. Defendants have failed show the "need to correct a clear error or prevent manifest injustice." *In re Beacon Associates Litig.*, 818 F. Supp. 2d 697, 701 (S.D.N.Y. 2011).

CONCLUSION

For the foregoing reasons, Defendants' motion for reconsideration is denied. The Clerk of the Court is directed to remove Docket No. 42 from the Court's list of pending motions.

Dated: June 30, 2014

U.S.D.J.

BY ECF TO ALL COUNSEL