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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 MONSTER ENERGY COMPANY,

12 Plaintiff,

13 v.

14 INTEGRATED SUPPLY NETWORK,
15 LLC,

16 Defendant.

Case No.: ED CV 17-548-CBM-RAOx

**ORDER RE: PLAINTIFF'S
MOTION FOR PERMANENT
INJUNCTION**

17 The matter before the Court is Plaintiff's Motion for Permanent Injunction.
18 (Dkt. No. 457.)

19 **I. BACKGROUND**

20 On March 22, 2017, Plaintiff Monster Energy Company filed a complaint
21 against Defendant asserting the following four causes of action: (1) trademark
22 infringement, trade dress infringement, and false designation of origin under 15
23 U.S.C. § 1125(a); (2) trademark infringement pursuant to 15 U.S.C. § 1114; (3)
24 Unfair Competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and (4)
25 California Common law unfair competition. Following a nine-day trial, a jury
26 reached a verdict in favor of Plaintiff on its infringement claim as to its federally
27 registered trademarks that include the word "Monster" and its trade dress, awarded
28 zero dollars in damages to Plaintiff caused by Defendant's infringement, and

1 awarded \$5,000,000 in punitive damages to Plaintiff upon finding Plaintiff proved
2 by clear and convincing evidence that Defendant acted with malice, oppression, or
3 fraud. (Dkt. No. 446.) The jury found in favor of Defendant on Plaintiff's
4 infringement claim as to its unregistered mark "Monster" and federally registered
5 trademarks that include the word "Beast," and found that Plaintiff did not prove by
6 a preponderance of the evidence that Defendant's infringement was willful. (*Id.*)

7 **II. STATEMENT OF THE LAW**

8 Plaintiff seeks a permanent injunction under the Lanham Act and
9 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17203.

10 **A. Injunctive Relief Under the Lanham Act**

11 15 U.S.C. § 1116(a) of the Lanham Act vests the district court with the
12 "power to grant injunctions, according to the principles of equity and upon such
13 terms as the court may deem reasonable, to prevent the violation of any right of
14 the registrant of a mark registered in the Patent and Trademark Office or to
15 prevent a violation under subsection (a), (c), or (d) of section 1125 of this title."
16 District courts must apply "'traditional equitable principles" in deciding whether
17 to grant permanent injunctive relief,' and the decision is 'an act of equitable
18 discretion by the district court, reviewable on appeal for abuse of discretion.'"

19 *Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1137–38 (9th Cir. 2006)
20 (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

21 "According to these equitable principles, a plaintiff seeking a permanent
22 injunction must demonstrate: (1) that it has suffered an irreparable injury; (2) that
23 remedies available at law, such as monetary damages, are inadequate to
24 compensate for that injury; (3) that, considering the balance of hardships between
25 the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public
26 interest would not be disserved by a permanent injunction." *Id.* at 1138 (citing
27 *ebay*, 547 U.S. at 391). The court must conduct "a fair weighing of the factors
28 listed above, taking into account the unique circumstances of each case," and

“consider the totality of circumstances bearing on whether a permanent injunction is appropriate equitable relief.” *La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2014).

B. Injunctive Relief Under the UCL

California Business & Professions Code § 17203 provides:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court *may* make such orders or judgments, including the appointment of a receiver, *as may be necessary to prevent the use* or employment by any person *of any practice which constitutes unfair competition* . . .

(Emphasis added.) “Section 17203 does not mandate . . . injunctive relief when an unfair business practice has been shown. Rather, it provides that the court” with “a grant of broad equitable power.” *Cortez v. Purolator Air Filtration Prod. Co.*, 23 Cal. 4th 163, 180 (2000); *see also Zhang v. Super. Ct.*, 57 Cal. 4th 364, 371 (Cal. 2013) (“[T]he equitable remedies of the UCL are subject to the broad discretion of the trial court.”).

III. DISCUSSION

A. Defendant’s Motion to Strike

Defendant filed a “Motion to Strike Material Outside the Trial Record” in response to the Motion, wherein Defendant requests that the Court “strike the following documents from the record”:

1. Trial Exhibit 1827 – a record of prior criminal convictions of Defendant’s Senior Vice President of Marketing Scott Pilkenton;
2. Trial Exhibit 1090A – December 29, 2010 – August 31, 2018 ISN Monster Mobile Product Sales by Year Per ISN0074727
3. Excerpts of Matthew Rivera’s Deposition Transcript (Dkt. 459-1);
4. Excerpts of Kimberly Stoneman’s Deposition Transcript (Dkt. 459-2); and
5. Video of 2017 Expo (Dkt. 459-3).

1 (Dkt. No. 465.)¹

2 The final pretrial conference order provides that the issue of “[w]hether to
3 permanently enjoin [Defendant] from infringing” Plaintiff’s marks and trade dress
4 were issues to be tried by the Court. (Dkt. No. 322 at 29-30.) Rule 26(a)(3)
5 requires parties to identify each document or other exhibit it may present at trial
6 other than solely for impeachment purposes. Therefore, the fact that any of the
7 above materials were not offered as evidence to the jury at trial does not preclude
8 the Court from considering the materials for purposes of the instant Motion if they
9 were included on the parties’ joint exhibit list and are otherwise admissible.

10 Defense counsel declares Plaintiff’s counsel “indicated that its citation to
11 Exhibit 1827 was in error” during the meet and confer re: Defendant’s Motion to
12 Strike. (Merrick Dec. ¶ 5.) Accordingly, Defendant’s Motion to Strike Trial
13 Exhibit 1827 is **GRANTED**.

14 Defendant argues the parties agreed Plaintiff could use Exhibit 1090A for
15 demonstrative purposes during the jury trial, and that exhibit was not admitted into
16 evidence at trial. However, Exhibit 1090A was listed on the parties’ joint exhibit
17 list (Dkt. No. 406 at p.38) and Defendant does not raise any objections as to the
18 inadmissibility of Exhibit 1090A. Therefore, Defendant’s Motion to Strike
19 Exhibit 1090A is **DENIED**.

20 Defendant argues the excerpts from Rivera’s deposition were neither
21 designated by the parties for use at trial nor played for the jury at trial. Defendant
22 does not raise any objections as to the inadmissibility of these deposition excerpts.
23 Therefore, Defendant’s Motion to Strike the excerpts from Rivera’s deposition is
24 **DENIED**.

25 Defendant argues no excerpts from Stoneman’s deposition transcript were
26 admitted into evidence at trial because Stoneman testified live at trial and both
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28 ¹ Plaintiff did not file a response to Defendant’s Motion to Strike.

1 parties examined her at trial. The fact that Stoneman testified at trial, however, is
2 irrelevant to whether Stoneman's deposition testimony is admissible for purposes
3 of the instant Motion, and Defendant does not raise any objections as to the
4 inadmissibility of such deposition testimony. Accordingly, Defendant's Motion
5 Strike the excerpts from Stoneman's deposition is **DENIED**.

6 Defendant argues the video of the 2017 Expo was excluded by the Court at
7 trial. The video was not listed on the parties' exhibit list, and the Court excluded
8 the video on that basis during trial. (Trial Transcript at 1660:23–1661:4.)
9 Accordingly, the Court **GRANTS** Defendant's Motion to Strike as to the Video of
10 2017 Expo.

11 **B. Injunctive Relief Under the Lanham Act**

12 **(1) Irreparable Harm**

13 “[A]ctual irreparable harm must be demonstrated to obtain a permanent
14 injunction in a trademark infringement action.” *Herb Reed Enters., LLC v. Fla.*
15 *Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013); *see also San Miguel*
16 *Pure Foods Co. v. Ramar Int’l Corp.*, 625 F. App’x 322, 327 (9th Cir. 2015)
17 (“Irreparable harm may not be based on speculative injury.”) (citing *Solidus*
18 *Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*, 502 F.3d
19 1086, 1098 (9th Cir. 2007)).

20 Here, Plaintiff argues it has demonstrated irreparable harm through
21 evidence that it “expends tremendous effort to control its business reputation and
22 build goodwill” by “market[ing] its brand through specific and controlled
23 avenues,” has “earned significant attention” through its marketing efforts, and
24 “carefully controls the supply of licensed products in the marketplace.”² Plaintiff
25 argues Defendant's infringement undermines Plaintiff's efforts to control its

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27 ² See Trial Transcript at 218-19, 278, 291, 299-305, 312, 316-18, 320-21, 322,
28 323-24, 327-28, 335, 336, 346, 347-48, 349, 350-52, 355, 356, 410, 597, 599, 602-
03, 605, 607, 614, 617-18, 618-19, 624, 627, 628, 671, 677, 739-42, 747-48, 752,
760, 761; Exs. 1256, 1767.

1 business reputation and goodwill, as evidenced by Plaintiff's survey expert Dr.
2 Isaacson who testified that at least 24.5% of surveyed customers believed
3 Defendant's tools come from or are affiliated with Plaintiff,³ testimony by three
4 mechanics who testified they believed Defendant's products were affiliated with
5 Plaintiff,⁴ and comments by visitors of Defendant's social media accounts who
6 believed Defendant's "Monster" tools were affiliated with Plaintiff.⁵ Plaintiff also
7 argues the evidence demonstrates Defendant's tools are "inferior goods."⁶

8 "Evidence of loss of control over business reputation and damage to
9 goodwill" or loss of prospective customers "could constitute irreparable harm."
10 *Herb Reed*, 736 F.3d at 1250; *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush &*
11 *Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001). However, Plaintiff does not offer
12 evidence demonstrating it has actually lost control over its business reputation,
13 that its good will has actually been harmed, or that it has lost any prospective
14 customers as a result of Defendant's infringement. *See San Miguel Pure Foods*,
15 625 F. App'x at 327 (reversing permanent injunction issued by district court,
16 reasoning "[t]he district court's finding of irreparable harm was based on the
17 speculation that 'Ramar *would* effectively lose control over the Magnolia brand,'
18 not that it actually had. To support its conclusion, the district court cited to
19 evidence that Ramar had expanded its business operations to 2,000 stores and non-
20 Asian retailers. However, this evidence of Ramar's growth did not show that San
21 Miguel's infringement caused irreparable harm to Ramar."); *id.* at 327 ("None of
22 Ramar's evidence of actual confusion indicated that San Miguel's use of the
23 Magnolia mark had damaged Ramar's goodwill or that Ramar had lost control
24 over its business reputation. All comments about both Ramar and San Miguel's
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26 ³ See Trial Transcript at 1023.

27 ⁴ See Trial Transcript at 966, 974-75, 982-83.

28 ⁵ See Exs. 307, 322.

⁶ See Ex. 1, Rivera Depo. at 145-46; Trial Transcript at 964, 966, 983-84, 1879.

1 products were positive; none indicated that Ramar lost customers or goodwill
2 because of San Miguel's use of the mark on BMC goods."); *Active Sports Lifestyle*
3 *USA, LLC v. Old Navy, LLC*, 2014 WL 1246497, at *2 & n.1 (C.D. Cal. Mar. 21,
4 2014) ("Active has failed to present evidence beyond speculation that it will face a
5 loss of goodwill in the future, or that its inability to fully control the use of marks
6 substantially similar to its own will result in harm. . . . Active's strong reputation
7 and the goodwill associated with its brand is not evidence of actual irreparable
8 harm to Active's reputation or goodwill, and Active's plans to expand its business
9 combined with speculation that Old Navy's infringement might harm that effort is
10 not evidence of actual harm to Active's efforts.").⁷

11 Moreover, evidence regarding consumer confusion does not demonstrate
12 irreparable harm. *See Herb Reed*, 736 F.3d at 1250-51 ("Gone are the days when
13 '[o]nce the plaintiff in an infringement action has established a likelihood of
14 confusion, it is ordinarily presumed that the plaintiff will suffer irreparable harm if
15 injunctive relief does not issue.'") (citations omitted); *San Miguel Pure Foods*,
16 625 F. App'x at 327 ("[T]o establish irreparable injury, a trademark owner must

17 ⁷ *CFE Racing Prod., Inc. v. BMF Wheels, Inc.*, 793 F.3d 571 (6th Cir. 2015),
18 relied on by Plaintiff, is distinguishable because unlike in that case, here, Plaintiff
19 fails to demonstrate it has lost control over its reputation. *Cf. id.* at 595-96 (the
20 district court abused its discretion in issuing an injunction that permitted the
21 defendants to continue using the letters "BMF" in connection with their products,
22 reasoning "[t]he reality of this harm is not negated by the absence of damages"
23 and "[f]or the purpose of an injunction, '[i]rreparable harm exists in a trademark
24 case when the party seeking the injunction **shows that it will lose control over the**
25 **reputation of its trademark** ... because loss of control over one's reputation is
26 neither calculable nor precisely compensable.'") (Emphasis added.). *adidas Am.,*
27 *Inc. v. Skechers USA, Inc.*, 890 F.3d 747 (9th Cir. 2018), also relied on by
28 Plaintiff, is distinguishable because that case involved a preliminary injunction
wherein the applicable showing is a likelihood of irreparable harm, whereas a
permanent injunction requires the plaintiff to demonstrate actual irreparable harm.
Cf. id. at 756-57 (finding for purposes of a preliminary injunction that "[t]he
extensive and targeted advertising and unsolicited media, along with tight control
of the supply of Stan Smiths, demonstrate that adidas has built a specific
reputation around the Stan Smith with 'intangible benefits.' And, the customer
surveys demonstrate that those intangible benefits will be harmed if the Onix stays
on the market because consumers will be confused about the source of the shoes.
We find that the district court's finding of irreparable harm is not clearly
erroneous.").

1 do more than merely demonstrate that a trademark has been infringed or that
2 consumers have been confused. . . . Evidence of infringement or likelihood of
3 confusion alone may not give rise to a presumption of irreparable harm.”) (citing
4 *Herb Reed*, 736 F.3d at 1250).⁸

5 Plaintiff also argues Defendant’s continued infringement (after Plaintiff
6 notified Defendant of its infringement, after Plaintiff sent Defendant a cease-and-
7 desist letter, after Plaintiff filed the Complaint in this case, and even after the
8 jury’s verdict in this case) and introduction of new Monster-branded products
9 identical to or closely related to the goods sold by Plaintiff constitute irreparable
10 harm. Even assuming it is true Defendant has not ceased its infringing activity
11 and has expanded to sell products closer to the goods sold by Plaintiff, Plaintiff
12 must still demonstrate actual irreparable harm for a permanent injunction, which
13 Plaintiff has failed to do. *See Active Sports Lifestyle USA*, 2014 WL 1246497, at
14 *2 (“While Old Navy has not ceased its infringing activity, and is almost certain to
15 continue, that does absolve Active of its burden to demonstrate actual irreparable
16 harm.”).

17 Accordingly, Plaintiff fails to demonstrate actual irreparable harm required
18 for a permanent injunction under federal law.⁹

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20 ⁸ *See also Puma SE v. Forever 21, Inc.*, 2017 WL 4771003, at *4 (C.D. Cal. June
21 2, 2017) (evidence that “‘simply underscores customer confusion’ is not enough to
22 prove irreparable harm”) (citation omitted); *VMR Prods., LLC v. V2H ApS*, 2016
23 WL 7669497, at *14 (C.D. Cal. Dec. 29, 2016) (“Even if the Court were to
24 conclude that there exists a likelihood of confusion between the [parties’ marks],
25 [plaintiff] would not be entitled to the injunctive relief it seeks because they
26 provide no evidence that it has suffered an irreparable injury.”) (citations omitted).

27 ⁹ The jury’s award of \$0 in compensatory damages in this case indicates
28 Defendant’s infringement was not damaging to Plaintiff’s business reputation or
goodwill. *See Active Sports Lifestyle USA*, 2014 WL 1246497, at *3 (“[T]hough
the jury may have found Old Navy liable for infringement, its decision to award
no damages at all indicates that the infringement is not what was driving sales of
Old Navy’s products, nor damaging Active’s sales or the goodwill associated with
Active’s mark. Because no monetary damage resulted from the pre-trial
infringement and no other harm beyond speculation has been demonstrated, the
Court finds that no actual irreparable harm flowing from infringing activity
subsequent to the trial has been shown.”).

1 **(2) No Adequate Remedy at Law**

2 To obtain a permanent injunction, Plaintiff must show “remedies available
3 at law, such as monetary damages, are inadequate to compensate for the injury.”
4 *eBay*, 547 U.S. at 391. Here, Plaintiff argues the irreparable harm to Plaintiff’s
5 goodwill and reputation cannot be adequately remedied by money damages. As
6 discussed above, Plaintiff fails to demonstrate it has suffered irreparable harm.¹⁰

7 Plaintiff also argues the disruption repeated litigation would cause to
8 Plaintiff’s business operations would also be irreparable and it would be forced to
9 sue Defendant repeatedly absent an injunction. Plaintiff, however, has proffered
10 no evidence of harm to its business operations as a result of litigation. *See also*
11 *Active Sports*, 2014 WL 1246497, at *3 (“While it is true that cases decided before
12 *Herb Reed* held that a plaintiff’s being made to repeatedly sue to halt infringing
13 activity constituted an inadequacy of legal remedies, in the wake of *eBay* and
14 *Herb Reed*, it is difficult to cabin those holdings such that they would not apply to
15 any infringement verdict.”).

16 Accordingly, Plaintiff fails to show an inadequate remedy at law exists.

17 **(3) Balance of Hardships**

18 Plaintiff argues it “will continue to suffer without an injunction.” As
19 discussed above, Plaintiff has failed to offer evidence demonstrating any
20 irreparable harm caused by Defendant’s infringement. Therefore, Plaintiff fails to
21 demonstrate any undue hardship if an injunction is not issued.

22 Defendant offers evidence of the dollar amount of infringing products in
23 stock, in development or being produced, and the cost of “disposing of current and
24 on-order inventory,” and Defendant’s CEO declares Defendant “would be out of

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26 ¹⁰ The Court finds unpersuasive Plaintiff’s contention that the jury’s award of \$0
27 in damages caused by Defendant’s infringement confirms the inadequacy of
28 monetary relief in this case. *See, e.g., Active Sports*, 2014 WL 1246497, at *3
 (“[T]he Court finds unpersuasive Active’s argument at the hearing that the jury’s
 decision not to award damages actually strengthens the case for an equitable
 remedy.”).

1 business in this brand for six to twelve months” if it was required to “immediately
2 cease selling or producing any Monster Mobile products.” (Weber Decl. ¶¶ 3-7.)
3 However, “where the only hardship that the defendant will suffer is lost profits
4 from an activity which has been shown likely to be infringing, such an argument
5 in defense merits little equitable consideration.” *BMW of N. Am., LLC v. Arion*
6 *Euthenia, LLC*, 2018 WL 1407036, at *6 (C.D. Cal. Jan. 23, 2018) (quoting *Dr.*
7 *Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 924 F.Supp. 1559, 1574 (S.D.
8 Cal. 1996), *aff’d*, 109 F.3d 1394 (9th Cir. 1997)); *see also Active Sports*, 2014 WL
9 1246497, at *4 (“[T]he Court must . . . discount much of the inconvenience Old
10 Navy would face in complying with the Lanham Act’s requirements.”).
11 Moreover, Plaintiff offers evidence demonstrating the revenue from Defendant’s
12 infringing products is only a small portion of Defendant’s total revenue (i.e.,
13 approximately 2.5%).¹¹ Therefore, Defendant also fails to demonstrate any undue
14 hardship if an injunction were issued.

15 Accordingly, the balance of hardships factor does not favor either party.

16 (4) Public Interest in the Issuance of an Injunction

17 The public interest weighs in favor of granting a permanent injunction. *See*
18 *Internet Specialties W., Inc. v. Milon-DiGiorgio Enters., Inc.*, 559 F.3d 985, 993 n.
19 5 (9th Cir. 2009) (“The public has an interest in avoiding confusion between two
20 companies’ products.”); *Brookfield Commc’ns, Inc. v. West Coast Entm’t Corp.*,
21 174 F.3d 1036, 1066 (9th Cir. 1999) (injunctive relief may be appropriate “to
22 promote the public interest in protecting trademarks generally”); *State of Idaho*
23 *Potato Comm’n v. G & T Terminal Packaging, Inc.*, 425 F.3d 708, 715 (9th Cir.
24 2005) (“Trademarks protect the public from confusion by accurately indicating the
25 source of a product.”); *Active Sports*, 2014 WL 1246497, at *4 (“The public
26 interest . . . favors granting an injunction to avoid continuing violation of the
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28 ¹¹ See Trial Transcript at 1107-08, 1410, 1612; Ex. 1090A.

1 Lanham Act.”).

2 * * *

3 Accordingly, because Plaintiff fails to demonstrate it has suffered an
4 irreparable injury and there is no adequate remedy available at law, the Court
5 declines to issue a permanent injunction under the Lanham Act.

6 **C. Injunctive Relief Under California’s UCL**

7 Section 17204 of the UCL provides: “Actions for relief pursuant to this
8 chapter shall be prosecuted exclusively in a court of competent jurisdiction . . . by
9 a person who has suffered injury in fact and *has lost money or property as a*
10 *result of the unfair competition.*” Cal. Bus. & Prof. Code § 17204 (emphasis
11 added). Therefore, to demonstrate standing under the UCL, a plaintiff must show
12 (1) injury in fact; (2) lost money or property; and (3) lost money or property “as a
13 result of” the unfair competition. *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310,
14 326 (Cal. 2011); *Troyk v. Farmers Grp., Inc.*, 171 Cal. App. 4th 1305, 1349 (Cal.
15 Ct. App. 2009).¹² The California Supreme Court has therefore held that to bring a
16 UCL action, a private plaintiff “must be able to show *economic injury caused by*
17 unfair competition.” *Zhang*, 57 Cal. 4th at 372 (emphasis added).¹³ Standing
18 must exist at all times up until entry of judgment. *See Troyk*, 171 Cal. App. 4th at
19 1345 (“[F]or a [UCL] lawsuit to be allowed to continue, standing must exist at all
20 times until judgment is entered and not just on the date the complaint is filed.
21 Because standing goes to the existence of a cause of action, lack of standing may
22 be raised . . . at any time in the proceeding, including at trial or in an appeal.”).

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24 ¹² Section 17204 was amended to include these three elements for standing under
25 the UCL pursuant to the passage of Proposition 64 in 2004. *Troyk*, 171 Cal. App. 4th at 1345.

26 ¹³ *See also Kwikset*, 51 Cal. 4th at 323, 325 (“The plain import of this [“lost
27 money or property] requirement] is that a plaintiff now must demonstrate some
28 form of economic injury. . . . Proposition 64 requires that a plaintiff’s economic
injury come ‘as a result of’ the unfair competition. The phrase ‘as a result of’ in
its plain and ordinary sense means ‘caused by’ and requires a showing of a causal
connection or reliance on the alleged misrepresentation.”).

1 Here, the jury awarded Plaintiff \$0 in damages caused by Defendant's
2 infringement. Moreover, Plaintiff fails to offer evidence demonstrating it has
3 suffered economic injury or actual injury to its good will or reputation caused by
4 Defendant.


5 Therefore, the Court finds Plaintiff lacks standing under the UCL.¹⁴

6 **IV. CONCLUSION**

7 Accordingly, the Court **DENIES** Plaintiff's Motion for Permanent
8 Injunction.

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10 **IT IS SO ORDERED.**

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12 DATED: July 2, 2019.


13 **CONSUELO B. MARSHALL**
14 **UNITED STATES DISTRICT JUDGE**

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26 ¹⁴ See, e.g., *Akkerman v. Mecta Corp.*, 152 Cal. App. 4th 1094, 1098-1102 (Cal.
27 Ct. App. 2007); *Wiseman v. Ikon Office Sols., Inc.*, 2008 WL 2756472, at *10
28 (Cal. Ct. App. July 16, 2008); *Paz v. Sanders Oldsmobile-Cadillac, Inc.*, 2007 WL
49657, at *5-*6 (Cal. Ct. App. Jan. 9, 2007); *Hall v. Time Inc.*, 158 Cal. App. 4th
847, 855 (Cal. Ct. App. 2008).