UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 10-1333 JVS (MLGx)	Date	April 25, 2012
Title	FTC v. Lights of America Inc., et al.		

Present: The Honorable	James V. Selna	
Karla J. Tunis		Not Present
Deputy Clerk		Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings:

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[3] Claims using specific figures or facts, rather than generalized descriptions of the product's capabilities, require a high level of substantiation, such as scientific or engineering tests. In re Thompson Med.

Where the parties have made cross-motions for summary judgment, as they have in this case, the Court must consider each motion on its own merits. Fair Hous. Council v. Riverside Two

[4] Although there is some dispute as to when LOA began using the "replaces" claim on its packaging, (FTC's Combined Statement of Uncontroverted Facts and Conclusions of Law in Support of MSJ ("CSUF"), ¶ 28, Docket No. 204), images of the product packaging make clear that the claims were made as early as 2007, (Declaration of Kimberly L. Nelson ("Nelson Decl."), Exs. E, Docket No. 198-1). The precise date on which the claims were first used has not been established. (See also Nelson Decl., Exs. B-D (including date-stamped product packages from 2008 and 2009); Ex. A (Mr. Halliwell's Certification of Records of Regularly Conducted Activity).)

packaging made no other claims related to the amount of light produced, other than indicating that a particular lamp would emit either "bright white light" or "warm white light." (Id. ¶¶ 27, 45.) The other claims on the package related to energy use, energy savings, efficiency, and longevity. (Id. ¶ 46.)

Both FTC and LOA move for summary judgment on this Count. The Court must consider what a reasonable consumer would understand the "replaces" wattage claim to mean, whether the claim was material, and whether LOA lacked substantiation or a reasonable basis to make the "replaces" wattage claim.

As a threshold matter, LOA argues that the "replaces" wattage claims are not actionable because they are opinions based on the products' appearance. (LOA's Mot. Br., p. 17 (citing FTC Policy Statement on Deception, Oct. 14, 1983, reprinted in In re Cliffdale Assoc., Inc., 103 F.T.C. 110, 174 (1984)).) LOA reasons that because the "replaces" wattage claim is based on lamps' appearance, it qualifies as an "appearance" claim, which is not pursued under the FTC Policy Statement. (See id.) The Court disagrees that the "replaces" wattage claim is an "appearance" claim because LOA's advertising does not merely state that the LED Lamps "may appear to be as bright as a 20 watt incandescent bulb"; rather, they state that the LED Lamp "replaces 20 watts." The latter is the type of specific, numerical claim that is actionable under the FTC Policy Statement. See In re Cliffdale Assoc., Inc., 103 F.T.C. at 174. Further, it is the type of claim that requires greater substantiation than a generalized appearance claim. See In re Thompson Med., 104 F.T.C. 648, at *72.

The parties dispute what the "replaces" wattage claim means to a reasonable consumer. LOA contends that the "replaces" wattage claim indicated that the LED Lamps would fit into the same screw-in light sockets and light up using the same power source as an incandescent bulb. (LOA Mot. Br., p. 19.) This interpretation, however, ignores the wattage claim and considers the word "replaces" in a vacuum. A reasonable consumer reading the LED Lamp package purporting to "replace[] 45 watts" would expect the product to provide a comparable amount of light as a 45-watt light bulb, thereby making a suitable replacement for a 45-watt light bulb. LOA argues that because there were no standards for measuring LED light output in late 2007 when the LED Lamps were first designed, the "replaces" wattage claim could not have implied a wattage or lumen equivalence. (LOA Mot. Br., p. 19.) LOA's argument, however, presupposes that the average consumer would be sufficiently apprised of the limitations on LED lamp

testing to discredit the plain meaning of the claim. The Court cannot make this assumption. In sum, the "replaces" wattage claim expressly, or at least implicitly, connotes a comparable brightness or light output to the wattage indicated.

The Court also finds that the "replaces" wattage claim is material. Because the "replaces" wattage claim appears to be an express claim, it is per se material. Pantron I, 33 F.3d at 1096. However, even if it is an implied claim, it is material because it relates to the efficacy of the product, Novartis Corp., 223 F.3d at 786, and it concerns a central characteristic of the product that bears on a consumers choice to purchase it, Medlab, 615 F. Supp. 2d at 1081.

The central dispute regarding Count One is whether the "replaces" wattage claim lacked substantiation or a reasonable basis at the time LOA made the claim. LOA argues that even if the "replaces" claim connotes a light output or brightness equivalency, the claims were substantiated by the following evidence: (1) feedback from unidentified Wal-Mart employees regarding the relative brightness of the LED Lamps compared to fluorescent or incandescent lights; (2) naked eye comparisons of LED and incandescent lamps by Mr. Brian Halliwell, LOA's Vice President of Sales and Marketing; and (3) test results from independent testing laboratory Lighting Science, Inc. ("LSI"), which first tested LOA's products in December 2008. (LOA's Opp'n Br., pp. 10-11, Docket No. 192; LOA's Statement of Unconverted Facts and Conclusions of Law in Support of MSJ Mart Tw(CIVg the rel674See643.6201 reTc1 Tc TcTD0.98 274.74 496.2 Tm.0006 Tc153.Tw186.1

[5] Dr. Houser opines that even if the Walmart focus group had been conducted as a controlled experiment, it would be inappropriate to rely on a human factors experiment since wattage equivalency is rooted in photometric measurement. (Houser Report, Houser Decl., Ex. B ll. 1067-1070, Docket No.

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[7] LOA also argues that pictures of the LED and incandescent lamps compared show "there is no reasonable disagreement that LOA's LEDs are as bright or brighter than the incandescent bulbs to which the LEDs were compared." (LOA's Mot. Br., p. 5 (citing Declaration of Ashish Dudheker ("Dudheker Decl."), Exs. 1-21, Docket No. 171).) However, LOA does not specify to which photo it is referring, and the only photo seeming to compare LED and incandescent lamps is void of any labeling. Thus, the Court is in the dark as to which lamp is which. Moreover, from these photos it is not evident that the two lamps have equivalent brightness or light emission. In fact, this photo highlights the fact that an ad hoc comparison by a lay person is insufficient to substantiate a wattage equivalency claim.

[8] Although LOA claims that the CALiPER test results corroborate its claims, LOA also moves in limine to preclude introduction of this evidence. (Mot. in Limine, Docket No. 220.) This Motion is set for May 7, 2012. The Court considers the CALiPER test results in the cross-motions for summary judgment but notes that FTC is entitled to summary judgment on Count One independent of this evidence. Further, if LOA sought to raise admissibility issues at the summary judgment phase, it should have filed an evidentiary objection.

[9] The earliest CALiPER tests were completed on August 28, 2008, (Halliwell Decl., Ex. 7), while the earliest LSI test results were prepared for LOA on December 17, 2008, (Halliwell Decl., Ex. 6).

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[13] Dr. Ronen does not explicitly discuss the LSI testing other than to list results a table he prepared in his expert report. However, comparing the CBCP measurement for the LED Lamps to incandescent lamps at a comparable beam angle, it is evident that the CBCP measurement of the incandescent lamps greatly exceed the LED lamps. (See LSI Test, Ronen Decl., Ex. C; Houser Decl. ¶¶ 20-21.)

[14] Mr. Halliwell's analysis of the CALiPER and LSI test results is similarly flawed because it does not account for the beam angles of the lamps. (Halliwell Decl. ¶ 27; Houser Decl. ¶ 57.) Furthermore, Mr. Halliwell does not purport to be an expert in the field of lighting and LED technology, and thus he is unqualified to present expert opinions regarding the comparative CBCP measurements of

F.3d at 931 (reviewing the district court's granting of equitable monetary relief under the FTC Act for an abuse of discretion). To the extent that FTC seeks equitable monetary relief under Count I, there are multiple issues of fact which preclude summary judgment or summary adjudication on the issue. These include the appropriate period of recovery, the products covered (such as flood lamps), and the amount and appropriateness of any offset for actual consumer benefit afforded by the LEDs consumers purchased.[15]

2. COUNT TWO

In Count Two, FTC alleges that LOA made false or unsubstantiated statements regarding the light output in lumens generated by the LED Lamps. (FAC ¶¶ 92-93.) It is undisputed that LOA based all of its claims regarding the light output emitted by its LED Lamps on the testing reports it obtained by LSI and OnSpex. (FTC's SDF ¶ 79; Halliwell Decl. ¶¶ 32-34.) The FTC has not challenged the reliability of these tests, nor has it argued that these tests are insufficient to substantiate LOA's lumen claims. Accordingly, LOA is entitled to judgment on this Count as a matter of law.

3. COUNT THREE

In Count Three, FTC alleges that LOA made three types of false or unsubstantiated claims regarding the lifetime of the LED Lamps: (1) that the LED Lamps would last 30,000 hours; (2) that the LED Lamp "LASTS 15 TIMES LONGER than 2,000 hour Incandescent bulbs"; and (3) that "You'll never change your light bulbs again." (LOA's Mot. Br., pp. 10-12; FTC's Opp'n Br., p. 8) (emphasis in original). LOA concedes that it made the 30,000-hour claim on its packaging until August 2009. (LOA's Statement of Undisputed Facts and Conclusions of Law ("LOA's SUF") ¶ 43, Docket No. 198.) After August 2009, LOA reduced its lifetime claims to 20,000 hours, and then further reduced them to 15,000 hours around December 2009. (Id. ¶¶ 47, 50.) LOA has the burden of identifying the substantiation for each of these claims. Only LOA moves for summary judgment on this Count.

With regard to the 30,000-, 20,000-, and 15,000-hour "lifetime" claims, there is a genuine issue of fact as to whether LOA had adequate substantiation for these claims in

[15] FTC concedes that an offset would be appropriate on its restitution claim, though FTC maintains that it would be inappropriate to offset disgorgement relief. (FTC's Reply Br., p. 15 & n. 18.)

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defining LED lifetime was "L70," which indicates the time in hours it takes an LED product to depreciate to 70 percent of initial light output.[16] (Houser Report, ll. 158-59.) There is also a dispute as to whether LOA properly relied on the lifetime of the LED component rather than considering the LED Lamp product as a whole. LOA's expert Dr. Cowley asserts that LOA appropriately relied on a longevity assessment of the LED rather than the lamp itself because their were no standards or tests for predicting or evaluating LED lamp life at the time. (Declaration of Michael Cowley ("Cowley Decl.") ¶¶ 11-12.) Dr. Houser disagrees. He posits that by fall 2007, it was widely recognized that LEDs should be evaluated as integrated lighting products, rather than just the component parts. (Halliwell Decl. ¶¶ 9; Houser Decl., Ex. B ll. 190-204.) Thus, he concludes that a claim based solely on the lifetime of the LED could not adequately support a lifetime claim regarding the LED Lamp. Dr. Houser concludes that the data LOA relied upon from ParaLight was not sufficient in depth or breadth to support the lifetime claim; he posits that LOA should have obtained additional test and engineering data. (Houser Decl. ¶ 32, Ex. B ll. 602-619.)

Finally, Dr. Houser concludes that LOA's 30,000- and 20,000- hour claims were grossly inflated, pointing to a test of LOA's integrated LED Lamps that showed a rapid decline in lumen output in the first 961 hours. (Houser Decl. ¶ 33, Houser Report ll. 698-716.)[17] He posits that had LOA's products been tested for more than 961 hours, the LED Lamps would have continued to decline, making lifetime claims of more than a few thousand hours unsupportable and false. (Houser Decl. ¶ 33, Ex. C-M; Houser Report ll. 698-716.)[18] Additionally, Dr. Houser asserts that LOA improperly used data regarding particular products to support its life claims on its other product, failing to take into

[16] It is undisputed that under the L70 standard, at least one of the LED Lamps, the PAR 38, would have only had a 10,000-hour lifetime. (FTC's SDF ¶ 46; Halliwell Decl. ¶ 46, Ex. 27 at 4 (LOA-273); Ex. 28 at 1.)

[17] While Dr. Houser does not proffer any expert opinion on the 15,000-hour claim directly, his analysis demonstrates that there is at least a genuine question of fact regarding the 15,000-hour claim. LOA has not made a prima facie case regarding the 15,000-hour claim, and thus it is not entitled to summary judgment on that representation.

[18] Dr. Houser also notes that LOA's testing was inadequate because it only tested a product for 1,000 hours and extrapolated a "lifetime" claim without accounting for the exponential depreciation after the first 1000 hours.

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since that time. (Id. ¶ 8; Vakils' Statement of Undisputed Facts and Conclusions of Law ("Vakils' SUF") ¶ 1.) He is presently LOA's Chairman of the Board of Directors and President. (FAC ¶ 8.) Usman also has a 51 percent ownership interest in LOA. (Id.) Farooq, LOA's minority shareholder, joined LOA in 1980 and has served as Executive Vice President since 1981. (Vakils' SUF ¶ 27; Declaration of Farooq Vakil ("Farooq Decl.") ¶ 4, Docket No. 167-1.) It is undisputed that Usman is responsible for all operations of the company, oversees the company's engineering and marketing departments, and shares responsibility with his brother, Farooq, for overseeing LOA's

[19] The Vakils incorrectly argue that FTC must show actual knowledge of the deceptive claims to establish their individual liability for equitable injunctive relief. (Vakils' Mot. Br., pp. 3-4, 10-11.) As the Court discussed previously in its order denying the Vakils' Motion to Dismiss, FTC need not show the Vakils had knowledge of the deceptive acts to show liability for injunctive relief. (Order, Docket No. 87 (discussing FTC v. Garvey, 383 F.3d 891, 900 (9th Cir. 2004); FTC v. Network Servs. Depot, Inc., 617 F.3d 1127, 1138 n. 9 (9th Cir. 2010)).)

1994). In this case, both individuals served as corporate officers. Usman, the majority shareholder and President of LOA, concedes that he made the decision to enter the LED lamp market, set the prices for the LED Lamps, oversaw the marketing and engineering departments, oversaw the daily operations of

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