

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**TINNUS ENTERPRISES, LLC, and  
ZURU LTD.**

**Plaintiffs,**

**v.**

**TELEBRANDS CORP., et al.,**

**Defendants.**

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**No. 6:15-cv-00551 RWS-JDL**

**JURY DEMANDED**

**ORDER ON INJUNCTION**

Before the Court is the parties’ Joint Motion for Bond Amount and Injunctive Order. (Doc. No. 86.) On September 11, 2015, the Magistrate Judge issued his Report and Recommendation (“R&R”) recommending that Plaintiff’s motion for a preliminary injunction be granted. (Doc. No. 66.) On December 2, 2015, the Court issued an order adopting the findings of the Magistrate Judge and overruling all objections (“Order Adopting”). (Doc. No. 84.) Accordingly, on December 3, 2015, the Court issued an order directing the parties to meet and confer regarding the appropriate amount for a bond and an injunctive order. (Doc. No. 85.) The parties filed the instant motion on December 10, 2015, setting forth their disputes with regard to the bond amount and the scope of the injunction. Upon consideration of the arguments, the Court resolves those disputes and sets forth the terms of the injunction herein.

The parties present three main disputes with respect to the issuance of the injunctive order: (1) whether the order should apply to only those with actual notice of this Order or whether it should apply to those with knowledge of “the Court’s ruling”; (2) whether the injunction applies generally to the Balloon Bonanza product and any colorable imitation of the

same, or the Balloon Bonanza product and any colorable imitation of the same that infringes the '066 Patent; and (3) whether bond should be set at \$50,000 or \$1,000,000.

This Order sets forth the contents and scope of the injunction against Defendants pursuant to Federal Rule of Civil Procedure 65. Therefore, regarding the scope of notice, the injunction shall apply to those who receive actual notice of this Order. The reasons for the issuance of this injunction are set forth in both the R&R (Doc. No. 66) and this Court's Order Adopting (Doc. No. 84) and those findings are incorporated by reference herein. In the R&R, the Magistrate Judge analyzed the likelihood of success, including a detailed infringement analysis, with respect to the alleged infringing Balloon Bonanza product and the claims of the '066 Patent. (Doc. No. 66, at 6–9.) Accordingly, there is no basis or reasoning set forth to expand the scope of this injunction beyond the accused infringing product or any colorable imitation of the same that *infringes the '066 Patent*.

Plaintiffs cite to *Aevoe Corp. v. AE Tech Co.* in support of their proposed inclusion of only the “colorable imitation of the same” language. 727 F.3d 1375, 1378 (Fed. Cir. 2013). However, in that case, the Federal Circuit did not “rubber stamp” the appropriateness of such language for issuing an injunction in a patent case, but merely found that the addition of this language by the district court did not amount to a modification of the injunction that would provide jurisdiction to the appellate court. *Id.* at 1384. Indeed, in that case, the parties previously agreed to have that language removed because such language was appropriate for enforcing trademark rights, not patent rights. *Id.* at 1382. It was only during the contempt proceedings, where a central inquiry is whether a new product is “colorably different,” that the court modified the injunction to include the “colorable imitation” language after finding the defendants in contempt. *Id.* Here, there is no basis for such an inclusion of language where the Court only

analyzed the patent rights asserted. The scope of the injunction must therefore be limited only to those products that infringe the '066 Patent—the basis for which the injunction was granted. The “colorable imitation” language plausibly expands the scope beyond infringing products to those that merely look similar.

Finally, with respect to the bond amount, Defendants request the bond be set at \$1,000,000, which estimates the “minimum financial losses” Defendants would suffer if later found to be improperly enjoined. (Doc. No. 86, at 10–11.) Plaintiffs propose a bond of \$50,000 would be appropriate. (Doc. No. 86, at 5.) Defendants bear the burden of showing the extent of their injury resulting from an injunction prohibiting the sale, or offering for sale, of their Balloon Bonanza product. *Oakley, Inc. v. Sunglass Hot Inter.*, No. SA CV 01-1065 AHS, 2001 WL 1683252, at \*12 (C.D. Cal. Dec. 7, 2001), *aff'd on other grounds*, 316 F.3d 1331 (Fed. Cir. 2003) (“A successful movant for a TRO or preliminary injunction must post security ‘for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.’ It is Defendants’ burden to reasonably estimate the extent to which they would be damaged if this preliminary injunction were improvidently granted.” (quoting Fed.R.Civ.P. 65(c)). For example, the court in *Oakley* awarded a bond of just \$100,000 where defendants requested \$5 million and \$10 million, because “Defendants [did] not provide evidence to substantiate the necessity of their requested bond amounts.” *Id.* (citing *Equifax Services, Inc. v. Hitz*, 905 F.2d 1355, 1362 (10th Cir. 1990)).

Here, Defendants have provided no evidence to support their request of a \$1,000,000 bond. Indeed, Defendants do not now provide any sales figures or evidence of actual or potential losses, nor did they during the preliminary injunction hearing. Moreover, Defendants appear to agree that they are no longer selling or offering to sell the accused Balloon Bonanza product.

(Doc. No. 86, at 11.) Defendants appear to primarily dispute a lower bond amount because Plaintiffs' proposed injunction language covers products that do not infringe the '066 Patent. *Id.* However, as discussed above, that language has been rejected by the Court, and the scope of this injunction is limited to those products that infringe the '066 Patent. Accordingly, having set forth no sound basis for a bond of \$1,000,000 where no evidence of actual or potential loss was provided and Defendants are no longer selling the accused product, the Court finds a bond of \$50,000 to be appropriate in this case.

Accordingly, for the reasons set forth in Docket Nos. 66 and 84, it is hereby **ORDERED** as follows:

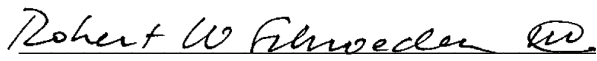
- The Court **FINDS** that Plaintiffs have carried their burden of showing (a) that Plaintiffs will likely succeed on the merits of their patent infringement claim by showing that U.S. Patent No. 9,051,066 ("'066 Patent") is valid and enforceable and that Defendants have infringed the '066 Patent, (b) that Plaintiffs have suffered and will continue to suffer irreparable harm if a preliminary injunction is not granted, (c) that the balance of hardships between Plaintiffs and Defendants favors the Plaintiffs and (d) that the public interest would be served by issuing a preliminary injunction in the present case. (Doc. Nos. 66, 84.)
- Pursuant to Federal Rule of Civil Procedure 65, 35 U.S.C. § 271, 35 U.S.C. § 283, and the inherent equitable powers of the Court, the Court hereby preliminarily **RESTRAINS AND ENJOINS** Defendants, their officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with Defendants who receive actual notice of this

Order by personal service or otherwise from making, using, importing, marketing, advertising, offering to sell, or selling in the United States the Balloon Bonanza product or any colorable imitation of the same that infringes the '066 Patent. *See* Fed.R.Civ.P. 65(d).

- This preliminary injunction shall remain in effect until further order of this Court.
- Plaintiffs are directed to file proof of bond in the amount of fifty thousand dollars (\$50,000) within seven business days of this Order. *See* Fed.R.Civ.P. 65(c). The bond shall serve as security for all claims with respect to this preliminary injunction

Pursuant to this Order, the Clerk of Court is directed to terminate the parties' joint motion (Doc. No. 86).

**So ORDERED and SIGNED this 22nd day of December, 2015.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE