

NL Brand Holdings LLC v Lepore

2019 NY Slip Op 30727(U)

March 13, 2019

Supreme Court, New York County

Docket Number: 656682/2016

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

INDEX NO. 656682/2016
MOTION DATE 12/21/2018, 02/06/2019
MOTION SEQ. NO. 007 008

NL BRAND HOLDINGS LLC, NL BRAND MANAGEMENT LLC, BLUESTAR ALLIANCE LLC, NL BSA OPKO, LLC,

Plaintiff,

- v -

NANETTE LEPORE, NL INTERNATIONAL, LLC, VAHEY LICENSING CO., LLC, ROBERT SAVAGE, ROBESPIERRE, INC., NANETTE LEPORE CONSULTING, LLC, NL IPCO LLC, NLHE LLC

Defendant.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 007) 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 292

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 289, 290, 291, 294, 295

were read on this motion to/for SEAL

Motion sequences 007 and 008 are consolidated for the purpose of this opinion. Upon the foregoing documents and for the reasons set forth on the record (3/13/2019), the motions are decided as follows.

Motion Sequence No. 7 (Defendants' motion to compel discovery)

- 1. Defendants' motion for the protective order is granted to the extent that former employees and other financial consultants who worked on the underlying transaction who execute a copy of the confidentiality agreement may see the document disclosure.
2. Defendant's motion with respect to Request No. 6 (license agreements and/or licensing arrangements or relationships between Bluestar and/or Brand Holdings and their Licensees for NANETTE LEPORE® branded products) and Interrogatory 1 (contact information for each Brand Holdings Licensee) is granted and shall be turned over within 2 weeks of the date of this order.

3. Defendant's motion with respect to Request No. 7 (documents reflecting or concerning Brand Holdings' and/or Bluestar's negotiations with [licensee] E-LO leading up to the September 2015 license agreement) is granted solely to the extent of the expected annual projected sales figures and shall be turned over within 2 weeks of the date of this order.
4. Defendant's motion with respect to Request No. 9 (documents reflecting or concerning Brand Holdings' and/or Bluestar's negotiations with [licensee] Dia Styling Co. d/b/a Dia&Co) is granted solely to the extent that counsel confirmed at oral argument on the record that there is no relationship with Dia&Co and/or the custodians do not possess any documents regarding Dia&Co.
5. Defendant's motion with respect to Request No. 11 (documents reflecting or concerning Brand Holdings' and/or Bluestar's ownership interest or investments (if any) in any of their Licensees or in entities which are owned in whole or in part by their Licensees' principals or affiliated entities), Request No. 23 (documents reflecting or concerning the design of the NANETTE NANETTE LEPORE® ("NNL") trademarks), and Interrogatory No. 3 (identify all persons who are or were investors, directors, officers, principals, and/or shareholders in Brand Holdings, Bluestar (for NANETTE LEPORE® branded products), and NLBM, including contact information and the title or role for each investor, director, officer, principal, and/or shareholder) is granted solely to the extent that the plaintiff shall disclose any actual agreements between any investor in Brand Management with any of the licensees within 2 weeks of the date of this order.
6. Defendant's motion with respect to Request No. 29 (documents reflecting or concerning the projected licensing fees and/or royalties received by Brand Holdings, broken down by Licensee), Request No. 30 (documents reflecting or concerning the total sales by Brand Holdings' and/or Bluestar's Licensees for NANETTE LEPORE® branded products for years 2015, 2016, 2017, and the first quarter of 2018), Request No. 31 (current pay-down calculations on the Preferred Amount, including underlying documentation on all deductions), Request No. 35 (documents sufficient to substantiate the expenses listed in Brand Holdings' Balance Sheets provided to defendants for years 2015, 2016 and 2017, including, but not limited to, the expenses for: Accounting; Advertising and Promotion; Commission Fee; Designer; Insurance; Legal; Management Fee/Reimbursements; Meals and Entertainment; Office; Payroll; Rent; Samples; Taxes; Travel; and VP Licensee. In the alternative, plaintiffs may produce NLBH's General Ledger), Second Request Nos. 9-10 (Brand Holdings' bank statements, financial statements, and annual royalty reports, including an explanation of the financial distributions, for years 2015 through 2018), and Request No. 33 (documents reflecting historical and projected revenues from brands comparable to NANETTE LEPORE® that plaintiffs license, own, or manage, including but not limited to, Catherine Malandrino, Elie Tahari, and Bebe) is granted solely to extent of any proforma projections/budget of Brand Holdings broken down by licensee or otherwise provided to Brand Holdings by the licensees to the extent that such information exists and is in their possession and shall be turned over within 30 days of the date of this order.

7. Defendant's motion with respect to Request No. 37 (accounting sheets, balance sheets, sales reports, and/or other financial records for each of Brand Holdings' and/or Bluestar's Licensees, breaking out sales by product category, i.e., shoes, watches, handbags, clothing, etc.) is granted to the extent that plaintiff has such information in its possession and shall be turned over within 2 weeks of the date of this order.
8. Defendant's motion with respect to Second Request Nos. 4-5 (customer distribution lists for Brand Holdings' licensees, i.e., each store and/or retailer where each licensee and/or sub-licensee has sold and is currently selling) is granted solely to the extent of "apparel" and to the retailers identified on Schedule 1 of the license agreement, and shall be turned over within 2 weeks of the date of this order.
9. Defendant's motion with respect to Second Request No. 6 (documents demonstrating countries of distribution for NANETTE LEPORE® branded products since completion of the transaction on December 15, 2014) was withdrawn at oral argument.
10. Defendant's motion with respect to Request Nos. 67-68, 70-72 (communications between Brand Holdings and/or Bluestar with discount retailers and/or Licensees, concerning labeling and marketing of NANETTE LEPORE® branded products sold to or through such discount retailers) is granted solely to the extent that plaintiff shall provide any known customer complaints which were discovered through the ESI search or otherwise within 2 weeks of the date of this order.
11. Defendant's motion with respect to Second Request No. 7 (proof of licensee sales (actual and projected) to Bloomingdales since completion of the transaction on December 15, 2014) is denied as duplicative of the above.
12. Defendant's motion with respect to Second Request No. 13 (financial statements that Brand Holdings and/or Bluestar have received from their Licensees for NANETTE LEPORE® branded products from 2015 through the present) is denied as duplicative of the above.

Motion Sequence No. 7 (Plaintiffs' cross-motion to compel discovery)

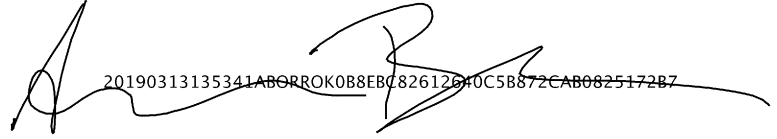
Plaintiffs' cross-motion is granted to the extent that the defendants shall identify any potential collaborations between the defendants and any other third-party brand owner in which the Licensed Marks were considered for use and turn over such information within 2 weeks of the date of this order.

Motion Sequence No. 8 (Plaintiff's motion for a protective order)

Plaintiffs' motion to seal is granted without opposition.

ORDERED that NYSCEF Docs. #269, 270, 271, 275, 276, 277 are sealed; and it is further

ORDERED that defendants are authorized to electronically file a redacted version of NYSCEF Doc. #281.


20190313135341ABORROK088EBC82612640C5B872CAB0825172B7

3/13/2019

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE