

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SERTA SIMMONS BEDDING, LLC, :
 :
 : Plaintiff, :
 -against- :
 :
 CASPER SLEEP INC., :
 : Defendants. :
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**ORDER DENYING MOTION
FOR PRELIMINARY
INJUNCTION**

17-cv-7468

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ALVIN K. HELLERSTEIN, U.S.D.J.:

Oral argument was held October 27, 2017, on Plaintiff's Motion for Preliminary Injunction. For the reasons stated on the record, Plaintiff's motion is denied.

A court may grant a preliminary injunction if: (1) the plaintiff is likely to succeed on the merits; (2) is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor and; (4) an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Federal Circuit has applied these four factors with respect to patent claims. *See Genentech, Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 1364 (Fed. Cir. 1997). As for the first factor, likelihood of success, the Federal Circuit further notes that "[the movant] must show that, in light of the presumptions and burdens that will inhere at trial on the merits, (1) it will likely prove that [infringement] and (2) its infringement claim will likely withstand [defendant's] challenges to the validity and enforceability of the [] patent." *Id.*

Plaintiff has not sufficiently shown that, in the absence of a preliminary injunction, it will be irreparably harmed. The "secondary" harms that Plaintiff points to, including the "network" and "ecosystem" effects identified at oral arguments, are, in this context, either "speculative," *see Automated Merch. Sys., Inc. v. Crane Co.*, 357 F. App'x 297, 301 (Fed. Cir. 2009), or

otherwise capable of being remedied by monetary damages. To the extent Plaintiff loses sales, customers, or market share to Defendant, monetary damages will make Plaintiff whole. Defendant's continued marketing and sale of the allegedly infringing product will increase the recovery eventually available to Plaintiff if and when it prevails. Similarly, any "reputational harm" to Plaintiff is either speculative or can otherwise be neutralized if Plaintiff prevails at trial and establishes itself as the true "innovator" it claims to be.

Finally, the expedited schedule provided by the Court, decreases, if not diminishes, the irreparable harm that Plaintiff claims. With an eye toward this consideration, trial has been set at the early date of July 9, 2018.

The Clerk shall terminate Motion for Preliminary Injunction (Dkt. No. 10).

SO ORDERED.

Dated: Dec. 5, 2017
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge