UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:25-cv-04018-JLS-SK Date: June 13, 2025
Title: La Carniceria Meat Market Group v. Carniceria Prime Meat Market LLC et al

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Kelly Davis	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (Doc. 19)

Before the Court is a Motion for Temporary Restraining Order and Order to Show Cause filed by Plaintiff and Counter-Defendant La Carniceria Meat Market Group ("LCMM Group" or "Plaintiff"), which was originally noticed for hearing on July 11, 2025. (Mot., Doc. 19.) Despite its title, the Motion is actually—for all intents and purposes—a motion for a preliminary injunction, and that is how the Court refers to it herein. After filing the Motion, Plaintiff alleged that it learned of new facts and renewed its earlier application for an immediate temporary restraining order ("TRO"), or in the alternative, requested the Court to advance the date of the hearing on the instant Motion. (App., Doc. 23.) Defendants and Counter-Claimants Carniceria Prime Meat Market LLC (Texas LLC), Carniceria Prime Meat Market LLC (California LLC), Branco Ramirez, and Reynaldo Ponce ("Defendants") opposed both the Motion and the *ex parte* application, (Opp., Doc. 27; Opp to App., Doc. 28), and Plaintiff replied. (Reply, Doc. 38.) The Court granted in part the *ex parte* application by advancing the hearing date on the instant Motion to June 6, 2025. Having now considered the briefing and oral arguments of the parties, and for the following reasons, the Court DENIES the Motion for a preliminary injunction.

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I. BACKGROUND

This action pertains to a trademark and trade dress dispute between Plaintiff and Defendants. Plaintiff is the proprietor of 22 "upscale butcher shops" in California and Texas named La Carniceria Meat Market. (Compl. ¶¶ 1, 29, Doc. 1.) Defendants have operated "high-quality, upscale" butcher shops in Texas since September 2022, and recently expanded to the California market. (Answer and Counterclaims ¶ 131, Doc. 32; Ramirez Decl. ¶ 5, Doc. 27-10.) As described herein, both parties allege that the other has infringed their trademark and trade dress. (Compl.; Answer and Counterclaims.)

A. Plaintiff's Trademark and Trade Dress

Plaintiff's butcher shops operate under the "LA CARNICERIA MEAT MARKET®" composite trademark (the "LCMM Group Mark") U.S. Registration No. 6995232. (Compl. ¶¶ 30, 63–64; Ex. B to Lifschitz Decl., USPTO Registration at 1, Doc. 22-2.) The LCMM Group Mark features "[a] stylized profile of a cow facing right, with the words 'LA CARNICERIA MEAT MARKET' under the cow":

(USPTO Registration at 1; *see also* Compl. ¶¶ 30, 63–64.)[1] Plaintiff's USPTO application stated that Plaintiff was "not claiming color as a feature of the mark." (Ex. A

[1] Exhibit A to the Ruiz declaration depicts two versions of the "La Carniceria logo" developed by Ruiz in 2017, one featuring black text on a white background and the other

to Lifschitz Decl., USPTO App. at 5, Doc. 22-1.) The LCMM Group Mark contains a disclaimer that "[n]o claim is made to the exclusive right to use 'LA CARNICERIA' and 'MEAT MARKET' apart from the mark as shown." (Ex. 4 to Opp., Disclaimer at 2, Doc. 27-4.)

Plaintiff selected the LCMM Group Mark to "set itself apart from the 'old world' style of traditional Mexican and Latino butcher shops[.]" (Compl. ¶ 30.) Plaintiff began using the LCMM Group Mark in 2017, applied for registration of the mark with the United States Patent and Trademark Office ("USPTO") on January 10, 2022, and received registration on March 7, 2023. (*Id.* ¶¶ 30, 63–64; *see also* USPTO App.; USPTO Registration.) Separate from the LCMM Group Mark, Plaintiff attempted and ultimately failed to register the simple word mark "La Carniceria Meat Market" with the USPTO on three separate occasions. (*See* Exs. 1–3 to Opp., Docs. 27-1, 27-2, 27-3.)

Plaintiff opened its first "La Carniceria Meat Market" butcher shop in the Los Angeles area in 2017. (Compl. ¶ 31; Ruiz Decl. ¶ 3, Doc. 20.) Plaintiff alleges its butcher shops have a minimalist "boutique" look and feel. (Compl. ¶¶ 34, 70 (quotation omitted).) Plaintiff identifies the following as its unregistered trade dress:

(1) Storefront signage consisting of the LCMM Group Mark;
(2) Welcome mats at the store entrances featuring the LCMM Group Mark offset against a dark background;
(3) Employee uniforms consisting of dark polo shirts with the LCMM Group Mark;
(4) "Modern looking and streamlined" L-shaped countertops with a clear glass display featuring meat on dark trays;

depicting white text on a black background as shown above. (Ruiz Decl. ¶ 7, Doc. 20; Ex. A to Ruiz Decl. at 2, Doc. 20-1.) The Court's analysis throughout this Order pertains to the registered mark depicted in Exhibit B to the Lifschitz Declaration, for which Plaintiff did not claim color as a feature. (*See* Ex. B to Lifschitz Decl.; USPTO App.)

(5) "[S]ofits [sic], and industrial hanging light fixtures extending the full length of the countertop";
(6) Digital display screens on white walls behind the countertops featuring marketing materials;
(7) Negative space, and use of flush shelving with recessed lighting;
(8) Non-perishable branded merchandise displayed on the flush shelving, including store-branded spice blends with clear grinders wrapped in dark labels featuring the LCMM Group Mark and packaged mesquite charcoal in dark minimalist bags with the LCMM Group Mark at the bottom of the flush shelving;
(9) Thick foldable paper bags with the LCMM Group Mark used for carry-out purchases, and rectangular cardboard boxes with the LCMM Group Mark for tomahawk steak purchases; and
(10) Stickers on plastic wrap covering meat trays featuring a white LCMM Group Mark offset against a dark background.

(*Id.* ¶ 74; *see also* Ruiz Decl. ¶ 4; Ex. A to Compl., Doc. 1-1.) Plaintiff's shops, as depicted in images attached to the Complaint, have a grey, white, and black color scheme, including black floors with white marbling and black countertops. (*See* Ex. A to Compl.) Plaintiff uses the LCMM Group Mark throughout its shops and describes its products as "high-end." (Compl. ¶¶ 38, 77.) It is "part of the Japanese Kobe Beef Association." (*Id.* ¶ 38.)

Plaintiff "estimates that it has spent millions of dollars developing, designing, and implementing the LCMM [b]randing." (*Id.* ¶ 37.) This effort includes expending "significant resources creating, developing, testing, refining and implementing [Plaintiff's] Trade Dress." (*Id.* ¶ 71.) Plaintiff claims that the "unique and distinctive look and feel of La Carniceria stores is one of the primary drivers of [its] expansion model and one of the most important selling points to be used by [it] in marketing business opportunities to prospective franchisers." (*Id.* ¶ 43; *see also* Ruiz Decl. ¶ 8.)

Plaintiff uses online and social media marketing to maintain and attract customer loyalty and currently has over 450,000 followers on Instagram. (Ruiz Decl. ¶ 6.) Its butcher shops have received approximately 1,000 Yelp reviews, at least some of which praise the shops' look and feel. (Compl. ¶¶ 40–41.) For instance, a July 10, 2024 review of Plaintiff's West Covina, California location describes the shop as "a jewelry store for a meat market." (*Id.* ¶ 41(a).) Another customer, on December 11, 2024, wrote the "place is so nice and clean." (*Id.* ¶ 41(c).) Plaintiff's social media often features promotional videos of women in black polo shirts with the LCMM Group Mark. (*Id.* ¶ 74(c); *see also* Ex. A to Compl. at 3.)

B. Alleged Infringement

In 2022, Plaintiff began to explore potential expansion from California to Texas, which culminated in Plaintiff opening its first Texas store on July 1, 2023. (Compl. ¶ 45; Ruiz Decl. ¶ 9; Ponce Decl. ¶ 8, Doc. 27-7.) Plaintiff conducted market research for this expansion. (Compl. ¶¶ 45–46.) On November 11, 2022, its founder and sole officer and director, Jose Luis Ruiz, visited a butcher shop owned by Defendants in Cypress, Texas. (*Id.* ¶¶ 31, 45–46; Ex. A to Supp. Lifschitz Decl., 2025 Statement of Information at 2, Doc. 38-2.) What happened during this visit is disputed. Ruiz states that when he entered Defendants' shop, he was "approached by an individual who introduced himself as Branco Ramirez, who [Ruiz] understand[s] is one of the founders of Carniceria Prime. Mr. Ramirez explained that he had admired La Carniceria since [] first visit[ing] one of [Plaintiff's] stores in California, and that he felt 'inspired' to copy [Plaintiff's] store because he believed it would also be successful in Texas." (Ruiz Decl. ¶ 11.) Defendants contest Plaintiff's characterization of this interaction, instead providing a declaration from Ramirez which states that Ruiz "inspect[ed] the layout, meat cases, and even the walls and ceiling of [Defendants'] store," at which point Ramirez approached Ruiz and the two had a friendly interaction. (Ramirez Decl. ¶ 3.) Ramirez attests that he

"never informed or implied that Carniceria Prime copied Plaintiff's stores . . . in any way." (*Id.* ¶ 4.)

Plaintiff alleges that "surveying Carniceria Prime" revealed that Defendants' shop had "the overall look and feel of La Carniceria[.]" (Compl. ¶ 48.) Plaintiff does not specify which Carniceria Prime location(s) it surveyed. (*See generally id.*) Images of Defendants' shops included in the Complaint show that at least one Carniceria Prime location has a white, marbled L-shaped countertop, glass display cases, negative space, black shelving recessed in a white wall, a neutral color scheme featuring a white and grey striped wall behind the countertop, grey wood or wood-like flooring, and cone-shaped hanging light fixtures running above the length of the countertop. (Ex. A to Compl.; *see also* Compl. ¶ 48.) Defendants' shops display meat in angled glass display cases against black paper, and have minimalist, branded non-perishable merchandise displayed within recessed shelving, including bags of charcoal in black branded bags on the bottom row. (Ex. A to Compl. at 5–7.) Plaintiff does not state whether the store depicted is in Texas or California, but submitted images of Defendants' Cypress, Texas location from November 2022 and April 2023 in support of the instant Motion. (*See* Exs. C & D to Supp. Lifschitz Decl., Docs. 38-4, 38-5.) The Cypress, Texas shop has many of the features described above, however the recessed shelving is a natural wood color, rather than black, and set within a light wood-colored wall. (Exs. C & D to Supp. Lifschitz Decl.) The Cypress, Texas shop displays yellow bags of charcoal on the bottom two rows of the recessed shelving. (Exs. C & D to Supp. Lifschitz Decl.)

On May 11, 2022, Carniceria Prime Meat Market (Texas LLC) filed an application with the USPTO to register the trademark CARCINERIA PRIME MEAT MARKET (the "CPMM Mark"). (Ex. C to Lifschitz Decl., CPMM USPTO App., Doc. 22-3.) The mark consists of a stylized profile of a "white show bull silhouette" oriented to the right at an angle with its head facing forward; under the bull the phrases "CARNICERIA PRIME Meat Market" and "ESTD 2021" are written in white and copper font on a black background:

(*Id.*) At the hearing on this Motion, Defendants informed the Court that the CPMM Mark uses a Barbaro Western font for the phrases "Carniceria Prime" and "ESTD 2021."

On July 4, 2023, the USPTO issued a non-final office action stating that it would not accept registration of the CPMM Mark. (Ex. D to Lifschitz Decl., Doc. 22-4.) The non-final office action provides that "[r]egistration of the applied-for mark is refused because of a likelihood of confusion with [Plaintiff's LCMM Group Mark], U.S. Registration No. 6995232." (*Id*. at 3.) On October 18, 2023, the USPTO deemed Carniceria Prime Meat Market (Texas LLC)'s application abandoned. (Ex. E to Lifschitz Decl., Doc. 22-5.) Defendants continue to use their logo in commerce. (Compl. ¶ 69; *see also* Ex. F to Lifschitz Decl., Doc. 22-6.)

Defendants produce evidence that many meat markets throughout the country use the word "Carniceria" in conjunction with an image of a stylized cow as marks for their stores, including one butcher shop that has operated in California since at least December of 2023:

(Ex. 6 to Opp., Doc. 27-6; *see also* Ex. 5 to Opp., Doc. 27-5.)

Plaintiff alleges that on February 20, 2025, someone presenting himself as Carniceria Prime's Director of Operations informed the current manager of La Carniceria Meat Market's location in Pico Rivera, California that Carniceria Prime was preparing to open a location in Norwalk, California. (Compl. ¶ 53.) Defendants estimate that they have invested approximately $750,000 into the opening of their first California location, and that their estimated profits over the next six months are $300,000. (Ramirez Decl. ¶ 5.)

On April 23, 2025, Defendant Ramirez allegedly posted a video to YouTube titled "CARNICERIA PRIME IS COMING TO CALIFORNIA." (Compl. ¶ 54.) On April 29, 2025, a consultant for Plaintiff became aware of a video posted on Carniceria Prime's Instagram account announcing the opening of a new storefront in Norwalk, California. (Gutierrez Decl. ¶ 9, Doc. 21.) Images of that storefront show a façade featuring the CPMM Mark. (Ex. A to Gutierrez Decl., Doc. 21-1.) Plaintiff alleges that Carniceria Prime's post caused confusion among the public, and provides evidence of one comment left on Instagram associating Defendants' post with La Carniceria Meat Market, as well as one Instagram comment associating a post by Plaintiff with Defendants. (Compl. ¶¶ 56–57; *see also* Exs. G & H to Lifschitz Decl., Docs. 22-7, 22-8.) Plaintiff further alleges that "[s]ince the opening of the first infringing Carniceria Prime store" in or about late 2022 in Texas, it "has received reports, inquiries and questions from La Carniceria

customers and potential customers regarding the striking similarities between Carniceria Prime's stores and La Carniceria [Meat Market]'s stores." (Compl. ¶ 60; *see also id.* ¶¶ 61–62; Gutierrez Decl. ¶ 7; Ruiz Decl. ¶ 13.) No further evidence is provided showing actual confusion.

On May 5, 2025, Plaintiff filed the instant action asserting claims for federal and common law trademark infringement, federal and common law trade dress infringement, and federal and common law unfair competition. (Compl. ¶¶ 85–117.) On May 21, 2025, Defendants filed an Answer asserting counterclaims for: (1) cancellation of registration against Ruiz; (2) common law trademark, trade dress, and unfair competition against Noto LLC d/b/a La Carniceria Meat Market (owner of La Carniceria Meat Market in Houston, TX and one San Antonio, TX location) and Nuhual LLC (owner of La Carniceria Meat Market in one San Antonio, TX location); (3) federal unfair competition and false designation of origin against Noto LLC and Nuhual LLC; (4) declaratory judgment against Ruiz; and (5) attorneys' fees. (Answer and Counterclaims ¶¶ 136–159; *see also id.* ¶¶ 127–28.)

On May 9, 2025, Plaintiff filed an *Ex Parte* Motion for Temporary Restraining Order and Order to Show Cause against Defendants, which the Court denied without prejudice on May 13, 2025. (First TRO, Doc. 12; Order Denying First TRO, Doc. 16.) In that Order, the Court concluded that Plaintiff had not effectuated proper service, failed to comply with the Court's Procedures, and had not shown an emergency necessitating the issuance of a temporary restraining order. (Order Denying First TRO at 2–4.)

After the TRO was denied without prejudice, and after Plaintiff had filed a regularly-noticed motion for a TRO/preliminary injunction, Plaintiff filed another *ex parte* application for an immediate TRO or, alternatively, to advance the hearing date, stating that Plaintiff learned "over the weekend of May 17, 2025, [that] Defendants quietly held a soft opening of their Norwalk [California] location to begin their active local infringement of Plaintiff's trademarks and trade dress[.]" (App. at 2.) The instant

Motion seeks: "(1) a temporary restraining order [] enjoining Defendants … from operating meat markets in California that infringe upon LCMM Group's protected trademarks and trade dress; and (2) an order setting a hearing to show cause, at the earliest possible date, why the Court should not issue a preliminary injunction on the terms set forth in (1), above." (Mot. at 2.) As noted above, despite Plaintiff's nomenclature, this was a fully briefed, noticed motion, for which the Court advanced the hearing. Accordingly, it is properly treated as a motion for a preliminary injunction.

II. LEGAL STANDARD

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that [a] preliminary injunction is in the public interest." *Id.* Alternatively, under the Ninth Circuit's sliding scale test, a plaintiff may obtain a preliminary injunction by showing "serious questions going to the merits" and that "the balance of hardships tips sharply" in plaintiff's favor, "so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

III. ANALYSIS

Plaintiff seeks a preliminary injunction restraining Defendants from encroaching upon Plaintiff's trademark and trade dress rights. (Mot.) In support, Plaintiff contends that it has shown: (1) a likelihood of success on the merits, as Defendants' CPMM Mark and trade dress are "confusingly similar" to the LCMM Group Mark and Plaintiff's trade dress; (2) that it will suffer irreparable harm in the absence of a preliminary injunction because Defendants will encroach upon Plaintiff's primary market; (3) that the balance of

equities tips in Plaintiff's favor because Defendants do not have a legitimate interest in operating an infringing business; and (4) that the public interest favors restraining Defendants' conduct so as to avoid confusion in the marketplace and to protect Plaintiff's artistic innovation. (*See generally id.*)

Defendants oppose Plaintiff's Motion on several grounds. First, Defendants argue that Plaintiff lacks standing to bring its claim for federal trademark infringement because it is not the registrant of the LCMM Group Mark. (Opp. at 6.) Defendants further contend that Plaintiff cannot show a likelihood of success on the merits, irreparable harm, or that the balance of equities tips in Plaintiff's favor. (*See generally id.*)

Plaintiff bears the burden of proof to show that it satisfies the four prongs of the *Winter* test or, alternatively, that "serious questions" exist going to the merits of its claims and that "the balance of hardships tips sharply" in its favor. *See Winter*, 555 U.S. at 22; *All. for the Wild Rockies*, 632 F.3d at 1135. As to the likelihood of success on the merits of its claims for trademark and trade dress infringement, Plaintiff also bears the burden to show that it has protectable trademark rights in its logo and trade dress. *OTR Wheel Engineering, Inc. v. West Worldwide Services, Inc.*, 897 F.3d 1008, 1022 (9th Cir. 2018). However, because the LCMM Group Mark is federally registered, Defendant bears the burden to show the mark's invalidity. 15 U.S.C. § 1057(b); *see also Zobmondo Ent., LLC v. Falls Media, LLC*, 602 F.3d 1108, 1113 (9th Cir. 2010).

The Court first addresses whether Plaintiff has standing to bring its federal trademark infringement claim, before then considering whether Plaintiff has established that it is entitled to a preliminary injunction.

A. Standing

Defendant argues that Plaintiff lacks standing to bring this action because it is not the holder of the LCMM trademark registration. (Opp. at 6.) Pursuant to the Lanham

Act, a "registrant" of a trademark may bring a civil action for trademark infringement. 15 U.S.C. § 1114. Registrant is defined to include the "legal representatives, predecessors, successors and assigns of such applicant or registrant." 15 U.S.C. § 1127. "To establish standing to sue for trademark infringement under the Lanham Act, a plaintiff must show that [it] is either (1) the owner of a federal mark registration, (2) the owner of an unregistered mark, or (3) a nonowner with a cognizable interest in the allegedly infringed trademark." *Halicki Films, LLC v. Sanderson Sales & Mktg.*, 547 F.3d 1213, 1225 (9th Cir. 2008).

Plaintiff here does not own the LCMM Group Mark; rather, Counter-Defendant Jose Luis Ruiz, the sole officer and director of LCMM Group, is the registered owner. (USPTO Registration; *see also* 2025 Statement of Information.)

"Usually, a corporation is regarded by the law as a legal entity separate and distinct from its stockholders, officers and directors." 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 16:36 (5th ed. 2024). However, in instances where "facts [are] presented to show that an individual ownership of a corporation [is] so complete that [the individual and the corporation] equitably constituted a single entity, then sufficient control by the individual with use by the corporation inuring to the individual's benefit would be found." *In Re Hand*, 231 U.S.P.Q. 487, 488 (T.T.A.B. 1986) (quotation omitted); *see also Ducommun v. Jaiswal*, 2023 WL 11761162, at *5 (T.T.A.B. Nov. 13, 2023). Citing this principle, at least one court in this district has held that "the application of th[e] sole ownership principle" should not "flow in a single direction." *M.I.B. Grp. LLC v. Aguilar*, 2024 WL 3857540, at *7 (C.D. Cal. July 16, 2024). On this ground, that court held that "a corporation wholly owned by [an individual] should likewise have standing to claim an ownership interest in [that individual's] mark." *See id.* The court further stated that the corporation "[a]t the very least" constituted "'a nonowner with a cognizable interest in the allegedly infringed trademark[.]'" *Id.* (quoting *Halicki*, 547 F.3d at 1225).

Applying *M.I.B. Group*'s analysis to the instant case, the Court determines that Plaintiff has standing to sue for trademark infringement. Plaintiff has submitted evidence that Ruiz is the registered owner of the LCMM Group Mark and is Plaintiff's sole officer and director. (USPTO Registration; 2025 Statement of Information.) Accordingly, under application of the "sole ownership principle," or as a nonowner with a cognizable interest in the LCMM Group Mark, Plaintiff has standing.

B. Trademark Infringement

To prevail on an infringement claim, "a plaintiff must show that: 1) it has a valid, protectable mark, and 2) the defendant's use of the mark is likely to cause consumer confusion." *OTR Wheel Engineering*, 897 F.3d at 1022 (citation and quotation omitted).

It is important to note that Plaintiff here does not argue that Defendant cannot use the word mark "Carniceria Prime Meat Market." Nor could it. Plaintiff's composite trademark expressly disclaims each and every word in its own mark, "La Carniceria Meat Market." (*See* USPTO Registration; Disclaimer.) This is because the words are indisputably generic, using a common name to identify where Plaintiff's product is sold: a meat market or butcher shop. *See Orgain, Inc. v. N. Innovations Holding Corp.*, 2021 WL 1321653, at *5 (C.D. Cal. Mar. 22, 2021) (Staton, J.) ("[I]f the mark answers the question 'What are you?' then it is generic[.]") (citing *Filipino Yellow Pages, Inc. v. Asian Journal Publications, Inc.*, 198 F.3d 1143, 1147 (9th Cir. 1999)).

Instead, Plaintiff asserts that Defendant infringes the composite trademark, which the Court reviews wholistically. In this endeavor, the Court takes into account the entire logo[2] in determining whether the composite mark is protectable as valid, and whether Defendants' mark infringes on it. And because Plaintiff's composite trademark is

[2] The Court uses the terms "composite trademark," "composite mark," and "logo" somewhat interchangeably in this Order.

federally registered, it enjoys a presumption of validity, such that Defendant has the burden of showing its invalidity. 15 U.S.C. § 1057(b); *see also Zobmondo*, 602 F.3d at 1113.

So first, the Court addresses where Plaintiff's logo falls on the spectrum of weak to strong marks. To the extent that it is a weak mark—i.e., merely descriptive—then the logo must also have secondary meaning. In other words, the buying public must associate the logo with Plaintiff's goods. If secondary meaning is not shown, the mark is not valid, and the Court need not consider the relevant *Sleekcraft* factors. *See OTR Wheel Engineering*, 897 F.3d at 1022; *see also AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 349 (9th Cir. 1979).

1. Validity of the Mark

As described above, to determine the validity of Plaintiff's logo, the Court first analyzes the mark's strength. There are two measurements of a mark's strength: conceptual strength and commercial strength. *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1149 (9th Cir. 2011). Commercial strength is "an evidence-intensive inquiry" in which a Court need not engage at the preliminary injunction stage. *Id.* Conceptual strength "depends largely on the obviousness of its connection to the good or service to which it refers." *See Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Management, Inc.*, 618 F.3d 1025, 1032–33 (9th Cir. 2010). The Ninth Circuit has recognized that marks can be "placed in one of five categories, ranging from weakest to strongest: generic, descriptive, suggestive, arbitrary, and fanciful." *Id.* (citations omitted). A valid mark registered by the USPTO without the need for proof of secondary meaning carries a "strong presumption" of being a protectable and inherently distinctive—"i.e., suggestive"—mark. *Zobmondo*, 602 F.3d at 1113, 1115 (citation and quotation omitted). Once a plaintiff demonstrates valid registration of a mark, a defendant must show "by a preponderance of the evidence that the mark is not protectable." *Id.*; *see also Tie Tech, Inc. v. Kinedyne Corp.*, 296 F.3d 778,

783 (9th Cir. 2002). "The stronger a mark—meaning the more likely it is to be remembered and associated in the public mind with the mark's owner—the greater the protection it is accorded by the trademark laws." *Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1058 (9th Cir. 1999) (citation omitted).

Here, Plaintiff has submitted evidence that the LCMM Group Mark is a valid trademark, which was registered without proof of secondary meaning. (USPTO Registration.) Thus, Plaintiff is entitled to a presumption that the mark is protectable and "inherently distinctive." *Zobmondo*, 602 F.3d at 1113 (citation omitted).

Defendants seek to rebut the presumption that the LCMM Group Mark is distinctive with evidence showing that (1) Plaintiff's owner tried and failed three times to register the simple word mark "La Carniceria Meat Market"; (2) the LCMM Group Mark contains a disclaimer as to the phrases "La Carniceria" and "Meat Market"; (3) the word "Carniceria" is used by many Mexican meat markets across the country, several of which also use images of a stylized cow; and (4) another California butcher shop has used the mark "Mi Carniceria Prime Meat Market" in combination with a stylized cow since at least December 2023. (Opp. at 14–19; *see also* Disclaimer; Exs. 1–6 to Opp.)

For the reasons described below, the Court concludes that Defendants have, for the purposes of this motion, carried their burden to rebut the presumption that the LCMM Group Mark is inherently distinctive.

a. Conceptual Strength

The Ninth Circuit uses two tests to evaluate where a mark falls on the distinctiveness spectrum between descriptive and suggestive. The "primary criterion for distinguishing between a suggestive and a descriptive mark is the imaginativeness involved in the suggestion, that is, how immediate and direct is the thought process from the mark to the particular product." *Lahoti v. VeriCheck, Inc.*, 586 F.3d 1190, 1198 (9th

Cir. 2009). "A mark is suggestive if 'imagination' or a 'mental leap' is required in order to reach a conclusion as to the nature of the product being referenced. By contrast, a mark is descriptive if it defines a particular characteristic of the product in a way that does not require any exercise of the imagination." *Id.* (citation and quotation omitted). A second test for evaluating distinctiveness, the "competitors' needs" test, focuses on whether the mark is "actually needed by competitors to identify their goods or services." *Zobmondo*, 602 F.3d at 1117 (citation and quotation omitted). "If competitors have a great need to use a mark, the mark is probably descriptive[.]" *Id.*

"[U]nder the anti-dissection rule, the … distinctiveness of a composite trademark is determined by viewing the trademark as a whole, as it appears in the marketplace." *Off. Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1392 (9th Cir. 1993). However, when analyzing a composite mark, a district court may "separately view the component parts as a preliminary step on the way to an ultimate determination of probable customer reaction to the composite as a whole." *Lahoti*, 586 F.3d at 1201 (citation and quotation omitted).

While the Court does not decide the matter definitively at this preliminary stage, Defendants have made a strong showing that the LCMM Group Mark is descriptive. No "imagination" or "mental leap" is required to understand the obvious and direct connection between Plaintiff's LCMM Group Mark and the products its stores offer. *See Lahoti*, 586 F.3d at 1198. That is, the phrases "La Carniceria" and "Meat Market" are simply Spanish and English phrases that designate the very nature of Plaintiff's business: a market that sells meat. *See id.* at 1197, 1201. To the extent any confusion exists as to these phrases, it is because such phrases are generic. *See Orgain, Inc.*, 2021 WL 1321653, at *5; *Brookfield Commc'ns*, 174 F.3d at 1058 n. 19 (describing generic marks as those "used by the public to refer generally to the product rather than a particular brand of the product.")

The visual image of a stylized cow, while not generic, adds little to the distinctiveness of the LCMM Group Mark.[3] Rather, the cow further indicates the type of products consumers can expect to encounter at any La Carniceria Meat Market location. Indeed, the LCMM Group Mark is similar to those described by the Ninth Circuit as posing "an easy conclusion that [a] mark is merely descriptive"—for example, "a restaurant chain [seeking] a trademark in a name such as 'Delicious Foods,' or a taxicab company [seeking] a trademark in the name 'Reliable Cab,' or a clothing company in a name such as 'Ready Wear.'" *Lahoti*, 586 F.3d at 1197. While these examples refer to word marks and not, as here, a composite mark featuring a stylized image alongside text, a stylized cow is only marginally more descriptive of the products Plaintiff's shops offer—"marbled meats"—than the text "La Carniceria Meat Market" itself. (*See* Reply at 12.)

Defendants' evidence that Plaintiff's registered mark contains a disclaimer further supports a finding that the mark is descriptive. (*See* Disclaimer.) "The disclaimer requirement 'provides the benefits of the Lanham Act to applicants for composite marks with unregistrable components' and, at the same time, 'prevents an applicant from claiming exclusive rights to disclaimed portions apart from composite marks.'" *In re Slokevage*, 441 F.3d 957, 962 (Fed. Cir. 2006) (quoting *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560 (Fed. Cir. 1991), *recognized as partially overruled on other grounds by statute in*, *In re Wada*, 194 F.3d 1297, 1301 (Fed. Cir. 1999)). Thus, Plaintiff has no exclusive right to at least two of three key components of the LCMM Group Mark: the phrases "La Carniceria" and "Meat Market." Considering the impression of the composite as a whole—that being a stylized image of a cow with text referring to a

[3] As described above, a mark that answers the question 'What are you?' is generic, while "[a] protectable mark … identifies the source of the product by answering the questions: 'Who are you?' 'Where do you come from?' 'Who vouches for you?'" *Orgain*, 2021 WL 1321653, at *5 (citing *Filipino Yellow Pages*, 198 F.3d at 1147). Plaintiff's stylized cow does not directly answer the question "What are you?", but may tell a potential buyer something about where the product comes from: Plaintiff's butcher shops.

meat market in two languages—the Court finds that the "probable customer reaction" to Plaintiff's mark is to understand it as descriptive of a butcher shop. *Lahoti*, 586 F.3d at 1201.

The "competitors' needs test" reinforces the Court's conclusion that Defendants' have made a strong showing that Plaintiff's mark is descriptive. Defendants show that many butcher shops across the country, including at least one in California, either use or have applied for marks featuring a stylized cow in combination with text containing "Carniceria" and "Meat Market." (Exs. 5 & 6 to Opp.) Such evidence supports a finding that competitors "have a great need to use" the phrases "La Carniceria" and "Meat Market" in conjunction with an image of a cow when they sell beef products at a butcher shop. *See Zobmondo*, 602 F.3d at 1111 n.3, 1117. Defendants' evidence of use of similar marks by third parties is an indicator that the LCMM Group Mark is merely descriptive. *See id.* at 1118.

For these reasons, the Court concludes that Defendants have made a strong showing that the LCMM Group Mark is descriptive. Accordingly, the Court proceeds to consider whether Plaintiff has shown that the mark has acquired secondary meaning.

b. Secondary Meaning

A mark that is descriptive of the goods it identifies is not entitled to trademark protection unless a plaintiff shows that the mark has acquired secondary meaning. *Japan Telecom, Inc. v. Japan Telecom Am. Inc.*, 287 F.3d 866, 873 (9th Cir. 2002). Secondary meaning requires showing that there is "a mental recognition in buyers' and potential buyers' minds that products connected with the [mark] are associated with the same source." *Id.*; *see also Levi Strauss & Co. v. Blue Bell, Inc.*, 778 F.2d 1352, 1354 (9th Cir. 1985) ("[T]he basic element of secondary meaning is … the mental association by a substantial segment of consumers and potential consumers "between the alleged mark and a single source of the product.") (citation omitted). In evaluating secondary meaning,

courts look to a number of factors, including "(1) whether actual purchasers of the product bearing the claimed trademark associate the trademark with the producer, (2) the degree and manner of advertising under the claimed trademark, (3) the length and manner of use of the claimed trademark and, (4) whether use of the claimed trademark has been exclusive." *Levi Strauss*, 778 F.2d at 1358 (cleaned up, citation omitted).

Plaintiff has failed to show that the LCMM Group Mark has acquired secondary meaning. Plaintiff's argument as to this point returns, primarily, to distinctiveness. (*See* Reply at 12–13.) While Plaintiff has submitted evidence indicating that at least one consumer was confused by an Instagram post by Defendants (*see* Ex. G to Lifschitz Decl.), that evidence does not relate to consumers' reactions to *Plaintiff's* mark, which is not present in the post. Plaintiff's single screenshot of its own Instagram post under which one consumer asked, "When will the norwalk one be open[,]" (Ex. H to Lifschitz Decl.), does not suffice to establish that "a substantial segment of consumers and potential consumers" associate the LCMM Group Mark with Plaintiff's business. *Levi Strauss*, 778 F.2d at 1354.

c. Conclusion as to Validity of Mark

For the above reasons, the low conceptual strength of the LCMM Group Mark weighs against finding Plaintiff's mark valid. Accordingly, Plaintiff has failed to show a likelihood of success on the merits of its trademark infringement claims, and the Court need not analyze whether Plaintiff has shown a likelihood of confusion. *See OTR Wheel Engineering*, 897 F.3d at 1022; *see also Levi Strauss*, 778 F.2d at 1359.

Even if the Court were to apply *Sleekcraft*, however, Plaintiff would not be able to show a likelihood of success on the merits of its trademark infringement claims. The *Sleekcraft* analysis is "pliant" and "the relative importance of each individual factor will be case-specific[.]" *Brookfield*, 174 F.3d at 1054. While "similarity of the marks" is always important, *id.*, courts have also found the strength of the mark to be one of the

"most important" factors in a *Sleekcraft* analysis. *See, e.g.*, *Software, Inc. v. Discovery Commc'ns, Inc.*, 725 F. Supp. 2d 1294, 1305 (W.D. Wash. 2010) (finding similarities between the marks, evidence of actual confusion, and strength of the marks, particularly commercial strength, to be "the most important" factors); *Servpro Indus. Inc. v. Zerorez of Phoenix LLC*, 339 F. Supp. 3d 898, 910 (D. Ariz. 2018); *cf. Sleekcraft*, 599 F.2d at 350 ("[A] weak mark [is] entitled to a restricted range of protection. Thus, only if the marks are quite similar, and the goods closely related, will infringement be found."). Given the low conceptual strength of Plaintiff's mark, even if all of the remaining *Sleekcraft* factors were to point in its favor, Plaintiff would at most raise "serious questions going to the merits" of its trademark infringement claims. *All. for the Wild Rockies*, 632 F.3d at 1135. The Court would then consider whether "the balance of hardships tips sharply" in Plaintiff's favor. *Id.* For the reasons discussed in Section III.C, *infra*, it does not. Accordingly, for the purpose of determining injunctive relief, the Court need not fully analyze the *Sleekcraft* factors to conclude that Plaintiff has failed to show a likelihood of success on the merits of its trademark infringement claims.

2. Trade Dress Infringement

"Trade dress refers generally to the total image, design, and appearance of a product and may include features such as size, shape, color, color combinations, texture or graphics." *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001) (citations and quotation omitted). "[R]estaurants and similar establishments may have a total visual appearance that constitutes protectable trade dress." *Id.* To prevail on a claim for trade dress infringement, a plaintiff must prove that (1) its trade dress is nonfunctional, (2) its trade dress is inherently distinctive or has acquired distinctiveness through a secondary meaning, and (3) there is a likelihood that the consuming public will confuse Defendants' trade dress with Plaintiff's trade dress. *Disc Golf Ass'n, Inc. v. Champion Discs, Inc.*, 158 F.3d 1002, 1005 (9th Cir. 1998); *see also* 15 U.S.C § 1125(a)(3).

a. Nonfunctional

Trade dress is "functional if the combination of trade dress elements "*as a whole* is functional[.]" *Clicks*, 251 F.3d at 1259 (emphasis in original). "[F]unctional elements that are separately unprotectable can be protected together as part of a trade dress." *Id.* (quoting *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 842 (9th Cir. 1987)). "[T]he ultimate issue on functionality is whether [a plaintiff's] particular integration of elements leaves a multitude of alternatives to [others in plaintiff's] industry that would not prove confusingly similar to its trade dress." *Id.* (quotation omitted).

Plaintiff identifies its trade dress in Paragraph 74 of the Complaint; however, the language Plaintiff uses to describe its trade dress is not sufficiently unique for the Court to identify what, exactly, Plaintiff claims as protectable. (*See* Compl. ¶ 74.) Accordingly, the Court's analysis also makes reference to images of Plaintiff's stores included in Exhibit A of the Complaint.

Plaintiff "cannot claim a monopoly" on functional elements, such as a "particular type of lamp[] or counter[]" used in its stores. *Clicks*, 251 F.3d at 1259. Yet most of the elements comprising Plaintiff's claimed trade dress are paradigmatically functional: flush shelving and L-shaped counters serve to efficiently use limited store space, hanging light fixtures running the length of glass display cases properly illuminate perishable consumable goods, black backing paper highlights meat marbling, bags of charcoal placed on the bottom row of shelving facilitates easy lifting. (*See* Compl. ¶ 74; Ex. A to Compl.) Such features—along with storefront signage, welcome mats, employee uniforms, and paper bags and boxes for carry-out purchases—would functionally contribute to *any* equivalent business. As such, Plaintiff cannot claim a monopoly on these, or any other, functional aspects of its butcher shops. *See Clicks*, 251 F.3d at 1259. The question, then, is whether "the particular combination and arrangement of design elements" in Plaintiff's shops as a whole "leaves a multitude of alternatives" to the

butcher shop "industry that would not prove confusingly similar to [Plaintiff's] trade dress." *Id.* at 1261 (quotation omitted).

As to the collection of elements, Plaintiff contends that "nothing about running a retail meat market requires Defendants to utilize the exact same store layout combining a near-identical welcome mat with a confusingly similar logo, employees wearing near-identical polo shirts, distinctive L-shaped counters attached to high end display cases with strikingly similar sofits [sic] and hanging lights, large digital displays behind the counter, [and] uniform shelving on the adjacent walls displaying neat rows of similar non-perishable goods" as Plaintiff. (Mot. at 20–21.) While Plaintiff claims that this "collection of elements" evokes a "distinct brand aesthetic" the Court is hard-pressed to identify anything "aesthetic" about the totality identified here. Plaintiff simply describes features of a modern small-footprint commercial food market. The Court also notes Plaintiff's regular reference to the LCMM Mark within its identification of its trade dress. (*See id.*; *see also* Compl. ¶ 74 (referencing the logo mark eight times).) While the LCMM Mark is nonfunctional, Plaintiff's argument reveals that perhaps the main aesthetic feature of Plaintiff's claimed trade dress is not trade dress at all, but rather its trademarked logo.

Looking, however, at the images of Plaintiff's shops contained in Exhibit A of the Complaint, the Court can identify "several distinct decisions" that combine to serve a nonfunctional purpose. *See Clicks*, 251 F.3d at 1261–62. Plaintiff's shops use round, hanging light fixtures and have a dark/neutral color scheme with dark marbled flooring, and a black countertop. (Ex. A to Compl.) This color scheme extends to packaging for take-out purchases and non-perishable goods. (*Id.*) These design choices, in combination with Plaintiff's use of recessed shelving, L-shaped countertop, and lack of ornamentation on packaging and within the store, collectively create a distinct minimalist aesthetic. (*Id.*) As nothing about the nature of high-end butchery requires such a combination of elements, the trade dress is nonfunctional.

Having found that Plaintiff's trade dress is nonfunctional, the Court turns to whether the trade dress has acquired distinctiveness through secondary meaning and whether Defendant's trade dress is sufficiently similar to Plaintiff's such that the consuming public is likely to confuse the two.

b. Secondary Meaning[4]

"A plaintiff's trade dress acquires secondary meaning when the purchasing public associates the dress with a particular source." *Vision Sports, Inc. v. Melville Corp.*, 888 F.2d 609, 615 (9th Cir. 1989). "The factors to be assessed in determining secondary meaning include: whether actual purchasers associate [Plaintiff's] trade dress with [Plaintiff's products], the degree and manner of [Plaintiff's] use of the trade dress, and whether [Plaintiff's] use of the trade dress has been exclusive." *Id.*

Plaintiff's trade dress infringement claims fail to show a likelihood of success on the merits under this prong. Though the use of negative space, flush shelving, L-shaped counters, and a neutral/dark color scheme contributes to a modern and sleek butcher shop environment, Plaintiff fails to show that this interior design is one purchasers associate with Plaintiff as the "particular source." *Id.* Plaintiff's evidence submitted to support this point—nothing more than a few customers on social media who have praised its sleek, modern feel—does little to evidence that customers associate a "clean" look with Plaintiff's stores alone. (*See* Compl. ¶ 41.) Indeed, absent evidence to the contrary, it appears that Plaintiff's design elements are common in many contemporary restaurants and stores, undermining any claim to exclusivity in Plaintiff's trade dress. The same can be said for the fact that Plaintiff's employees wear dark polo shirts featuring its logo; Plaintiff has not shown that such an aesthetic is distinctive to it in the food industry.

[4] Though trade dress can be "inherently distinctive" without acquiring secondary meaning, *see Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 776 (1992), Plaintiff does not claim that its trade dress is inherently distinctive, but rather contends that it has acquired secondary meaning. (Mot. at 18–20; *see also* Compl. ¶ 82.)

Moreover, with the exception of referencing the use of the LCMM Group Mark on various elements within its stores, Plaintiff fails to identify its trade dress with a sufficient degree of specificity. For example, the Ruiz declaration identifies three "focal points" of the stores' design, namely, a "striking counter," "high-end meat display case," and "adjacent walls of uniform shelving to display neat rows of non-perishables[.]" (Ruiz Decl. ¶ 4.) But counters, display cases, and shelving are functional, and Plaintiff cannot exclude other butcher shops from having a "modern and sleek" look.

The Ruiz declaration also provides that Defendant Ramirez told him that Ramirez was "'inspired' to copy [Plaintiff's] store[.]" (*Id.* ¶ 11.) "[I]n appropriate circumstances, deliberate copying may suffice to support an inference of secondary meaning." *Clicks*, 251 F.3d at 1264. However, Defendants refute this evidence in the form of the Ramirez declaration, in which Ramirez states that he "never informed [Ruiz] or implied that Carniceria Prime copied Plaintiff's stores . . . in any way." (Ramirez Decl. ¶ 4.) Defendants also produced photographic evidence to show that, after visiting one of Defendants' stores in Texas, Plaintiff modified its stores to look more like Defendants.' (Exs. A & B to Pedraza Decl., Doc. 27-8; *see also* Ex. A to Compl.) Without deciding this dispute at the instant procedural stage, the Court concludes that the evidence submitted fails to show "deliberate copying" sufficient to support an inference of secondary meaning. *See Clicks*, 251 F.3d at 1265.

For each of these reasons, the Court concludes that Plaintiff has not shown that it is likely to establish the distinctiveness of its claimed trade dress.

c. Likelihood of Confusion

Likelihood of confusion "is the most important element of the three components of a protectable mark." *Clicks*, 251 F.3d at 1265 (citation and quotation omitted). "Likelihood of confusion exists when customers viewing the mark would probably

assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark." *Id.* (citation and quotation omitted). "The factual elements that make up likelihood of confusion include evidence of actual confusion, the defendant's intent in adopting the mark, similarity of marks, similarity of goods and marketing channels, and the strength of the mark." *Id.* (citation and quotation omitted). In other words, likelihood of confusion for trade dress is analyzed with guidance from the same factors "relevant to likelihood of confusion" in the trademark infringement context. *See Sleekcraft*, 599 F.2d at 349. This test "is pliant. Some factors are much more important than others, and the relative importance of each individual factor will be case-specific[.]" *Brookfield*, 174 F.3d at 1054. "[U]se of a mark must be likely to confuse an *appreciable* number of people as to the source of the product." *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1151 (9th Cir. 2002) (emphasis in original).

The Court concludes that Plaintiff has not established a likelihood of confusion as to an "appreciable number" of consumers between its shops and the focus of the instant Motion—Defendants' California location. *Id.* As an initial matter, most of Plaintiff's evidence relating to the allegedly infringing Carniceria Prime location appears to originate not from Defendants' California location, but rather from its Texas shops. (*See, e.g.*, Exs. C & D to Supp. Lifschitz Decl.; *see also* Compl. ¶ 48 (failing to identify the location of images taken at Defendants' shop).) A photograph purportedly originating from Defendants' California location, (Ex. E to Lifschitz Decl., Doc. 23-6), merely depicts meat in a glass display case—something a visitor to any butcher shop would encounter. On this evidence, the Court cannot properly evaluate whether customers viewing Defendants' California shop would assume that it is associated with those operated by Plaintiff.

Even assuming, however, that Defendants' California location resembles its Texas shops or the images of one of Defendants' locations purportedly depicted in Paragraph 48 of Plaintiff's Complaint, the Court cannot conclude that the parties' butcher shops are so

similar as to establish a likelihood of consumer confusion. Plaintiff's butcher shop has dark marbled flooring, and a fully black L-shaped counter illuminated by hanging light fixtures behind which is an all-white wall. (Compl. ¶ 48.) Plaintiff's shelves are wood-colored and set within grey and black walls illuminated by rectangular light fixtures. (*Id.*) On these shelves, Plaintiff displays branded products in clear packaging, as well as branded black bags of charcoal. (*Id.*)

Defendants' depicted shops, by contrast, have grey wood or wood-like flooring and a predominant grey-and-white patterned wall behind a marbled white and black L-shaped counter. (*See* Compl. ¶ 48; Ex. A to Compl.; Exs. C & D to Supp. Lifschitz Decl.) As to Defendants' shelving, two different aesthetics are visible depending on which set of images submitted by Plaintiff the Court references. (*See* Compl. ¶ 48; Ex. A to Compl.; Exs. C & D to Supp. Lifschitz Decl.) Defendants' shelving, as depicted in the Complaint, displays branded products in black and clear packaging on black-colored recessed shelves set within a white wall. (Compl. ¶ 48; Ex. A to Compl.) The shelves also appear to have tortillas and/or chips on the middle row. (Compl. ¶ 48; Ex. A to Compl. at 6.) Cone-shaped light fixtures illuminate the shelving from above. (Compl. ¶ 48; Ex. A to Compl. at 6.) The images in Exhibits C and D to the supplemental Lifschitz declaration show wood-colored shelving recessed within wood-colored walls illuminated by round light fixtures. (*See* Exs. C & D to Supp. Lifschitz Decl.) The shelves display branded spices in clear packaging and bright-yellow bags of charcoal on the bottom row. (*See* Exs. C & D to Supp. Lifschitz Decl.)

Examining this evidence as a whole, the Court cannot find that consumers would likely mistake Defendants' locations for those of Plaintiff. In particular, Defendants' depicted shops blend a Western aesthetic with contemporary minimalism. (*See* Compl. ¶ 48; Exs. C & D to Supp. Lifschitz Decl.) This blended aesthetic is entirely absent from Plaintiff's shops, which more fully adhere to a purely minimalist design. (*See* Compl. ¶ 48; Ex. A to Compl.) This finding is further supported by the relatively low strength of Plaintiff's trade dress. As discussed in Section III.B.3.b, *supra*, it is unlikely that

consumers associate a dark color scheme, L-shaped counters, recessed lighting, hanging light fixtures, negative space, flush shelving, and branded-products on shelves with Plaintiff alone.

In addition, to the extent it is relevant at this early stage of litigation, Plaintiff has presented minimal evidence of actual consumer confusion as to Defendants' California location. *See Network Automation*, 638 F.3d at 1151. That is, Plaintiff presents evidence of consumer confusion relating to Defendants' California location in the form of two Instagram posts, one made by Defendants and one by Plaintiff. (*See* Exs. G & H to Lifschitz Decl.) These two isolated incidents of confusion at best show only a slight likelihood of confusion and are far from persuasive evidence that confusion is likely among an "*appreciable*" number of the consuming public. *See Entrepreneur Media*, 279 F.3d at 1151 (emphasis in original).

In light of the analysis above, even if the other remaining relevant likelihood of confusion factors—the proximity of the goods, marketing channels used, defendants' intent in adopting the mark, and degree of care likely to be exercised by a consumer—weigh in favor of Plaintiff, that would not suffice to show a likelihood of confusion between Plaintiff's and Defendants' trade dress in this case.[5] Put differently, consumers or prospective consumers of both Plaintiff's and Defendants' products may be seeking out "high-end" marbled meats that they view on Instagram and for which they are likely to exercise some degree of care in purchasing, but the fact remains that Plaintiff has not shown that such consumers would associate a "sleek and modern" butcher shop with it alone, nor that the parties' shops are so similar that consumers would likely mistake Defendants' shops for Plaintiff's. Considering that, at base, Plaintiff's trade dress

[5] *Sleekcraft* also identified likelihood of expansion of product lines as a potential factor. *Sleekcraft*, 599 F.2d at 349. However, "[w]here two companies are direct competitors, this factor is unimportant." *Network Automation*, 638 F.3d at 1153. As Plaintiff and Defendants both sell high-end meat products, they are direct competitors. The Court thus does not consider this factor.

infringement claims complain of similarities between consumers' in-store experiences at its and Defendant's shops, the Court considers the strength of the mark and similarity of the marks to be the two most important factors in this "pliant" *Sleekcraft* analysis. *Brookfield*, 174 F.3d at 1054. Having failed to show a likelihood of success on these factors, Plaintiff has not shown a likelihood of consumer confusion, and thus likewise fails to demonstrate a likelihood of success on the merits of its trade dress infringement claims.

3. Unfair Competition

"[C]ourts have uniformly held that common law and statutory trademark infringements are merely specific aspects of unfair competition, [so] a finding of likelihood of confusion under Plaintiff's trademark infringement claim also supports a finding of likelihood of confusion under Plaintiff's common law unfair competition claim." *Hokto Kinoko Co. v. Concord Farms, Inc.*, 810 F. Supp. 2d 1013, 1040 (C.D. Cal. 2011); *see also Spy Optic, Inc. v. Alibaba.Com, Inc.*, 163 F. Supp. 3d 755, 768 (C.D. Cal. 2015) ("[T]he Ninth Circuit has consistently held that state common law claims of unfair competition and actions pursuant to California Business and Professions Code section 17200 are substantially congruent to claims made under the Lanham Act") (cleaned up).

Because Plaintiff has failed to establish a likelihood of success on the merits of its trademark and trade dress infringement claims, it has also failed to show that it is likely to prevail on the merits of its federal and common law unfair competition claims.

C. Balance of Hardships

"[A] balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a

likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies*, 632 F.3d at 1135. The balance of hardships "tips sharply" when, for instance, severe harm will occur in the absence of an injunction and the hardship to the party opposing the injunction is "so small" that it fails to "provide a significant counterweight to the harm" caused to the party seeking the injunction. *See id.* at 1138.

Plaintiff's asserted harm here is that "Defendants will further encroach upon LCMM Group's primary market and significantly exacerbate the customer confusion being caused by their infringing offerings." (Mot. at 23.) Defendants provide that they "will face significant losses both monetarily and in the loss of perishable meat" in the event of a preliminary injunction. (Ponce Decl. ¶ 10; *see also* Opp. at 24.)

Considering these competing interests, even if the Court were to find that Plaintiff raised serious questions going to the merits of its claims, the balance of hardships does not tip "sharply" in Plaintiff's favor so as to warrant the issuance of a preliminary injunction. *All. for the Wild Rockies*, 632 F.3d at 1135. In *Alliance for the Wild Rockies*, the balance of hardships "tip[ped] sharply enough" to warrant a preliminary injunction where the harm sought to be avoided was "logging on 1,652 acres of land" which would have led to the irreparable loss of "work and recreational opportunities that would otherwise [have been] available on that land" and the countervailing harm was "foregone revenue of as much as $16,000, and a much more speculative loss of up to $70,000." 632 F.3d at 1137. In contrast, the balance of hardships here does not "tip[] sharply" for Plaintiff. *See id.*; *see also M.R. v. Dreyfus*, 697 F.3d 706, 737 (9th Cir. 2012) (balance of hardships tipped "sharply" for plaintiffs who faced "serious risk of institutionalization" in violation of federal law while defendant asserted "diffuse and nonspecific hardships[.]"). In other words, Plaintiff's asserted harms—encroachment on its primary market and exacerbation of consumer confusion—are not akin to those found to tip the balance "sharply" in favor of an injunction. *Cf. Sardi's Restaurant Corp. v. Sardie*, 755 F.2d 719, 726 (9th Cir. 1985) (balance of hardships did not tip sharply in New York restaurant owner's favor where plaintiff's restaurant was "more established" and thus "in a better

position to deal with any minor identity problems" than was defendant's California restaurant).

But even assuming the risk of encroachment on a business's primary market and exacerbated consumer confusion could in some circumstances tip the balance "sharply" toward issuance of an injunction, the evidence presented does not warrant such a finding here. Plaintiff's and Defendants' high-end butcher shops have coexisted without issue in Texas under their respective marks for nearly two years. (*See* Compl. ¶ 4; Ponce Decl. ¶ 8.) That both parties operate in Texas without apparent issue suggests that Plaintiff's and Defendants' respective shops can compete in close proximity to each other without causing severe or irreparable harm. The lack of evidence of any irreparable harm in Texas creates an inference that the parties will be able to operate near each other in California without causing such harm. Plaintiff has presented no evidence indicating that there is something distinct about the California market that would alter this analysis, *e.g.* evidence that the parties' side-by-side operations are materially different in California than in Texas. Defendants, by contrast, have presented evidence that Plaintiff has been operating in some proximity to another California butcher shop that uses "Carniceria" and "Meat Market" with a stylized cow in its logo without apparent issue since at least 2023. (*See* Ex. 6 to Opp.)

For the above reasons, even if Plaintiff showed "serious questions" going to the merits of its claims, the balance of hardships does not tip "sharply" in Plaintiff's favor such that a preliminary injunction would be warranted in this case. Thus, the Court need not consider the remaining *Winter* factors.

IV. CONCLUSION

For the above reasons, Plaintiff's Motion is DENIED.

Initials of Deputy Clerk: kd