

UNITED STATES COURT OF APPEALS

FEB 19 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FALCON STAINLESS, INC., a California Corporation,

Plaintiff - Appellant,

v.

RINO COMPANIES, INC., DBA Performance Sales, a California Corp., DBA Rino Flex Connectors; JOHN NOVELLO, DBA Performance Sales Inc., an individual; HARRY RIEGER, an individual; PERFORMANCE SALES INC., a California corporation,

Defendants - Appellees.

No. 11-56863

D.C. No. 8:08-cv-00926-AHS-MLG

Central District of California,
Santa Ana

ORDER

Before: KLEINFELD, SILVERMAN, and HURWITZ, Circuit Judges.

This court lacks jurisdiction over the appeal because the district court’s order granting a new trial on appellant’s claims for false advertising under 15 U.S.C. § 1125(a) and trade libel/product disparagement is an interlocutory order not appealable as a final judgment. Eaton v. Nat’l Steel Prods. Co., 624 F.2d 863, 864 (9th Cir. 1980); Schudel v. Gen. Elec. Co., 120 F.3d 991, 994–95 & n.9 (9th Cir. 1997), abrogated on other grounds by Weisgram v. Marley Co., 528 U.S. 440 (2000). Appellant has not obtained certification pursuant to Fed. R. Civ. P. 54(b),

which would allow appeal of the order granting judgment as a matter of law on its claims for trademark infringement and intentional interference with prospective economic advantage. See Eaton, 624 F.2d at 864.

We order a limited remand to the district court for its consideration as to whether its October 21, 2011 order granting appellees' motion for judgment as a matter of law should be certified as an appealable final judgment under Rule 54(b). See, e.g., Rollins v. Mortgage Elec. Registration Sys., Inc., 737 F.3d 1250, 1254 (9th Cir. 2013). This panel shall retain jurisdiction over this appeal.