UNITED STATES DISTRICT COURT		
EASTERN DISTRICT OF NEW YORK		
	X	
	:	
FUJIFILM North America Corporation,	:	<u>ORDER</u>
-	:	
Plaintiff,	:	16-cv-5677 (BMC)
	:	, ,
- against -	:	
<u> </u>	:	
ABESONS CORP., et al.,	:	
	:	
Defendants.	:	
	X	

COGAN, District Judge.

Plaintiff's motion for summary judgment is denied. The Court concludes that numerous genuine issues of material fact exist, which preclude the entry of summary judgment at this time, and that plaintiff has otherwise not shown it is entitled to judgment as a matter of law.

Plaintiff appears to dispute whether certain of the defendants provide warranties, but the Court concludes that genuine issues of material fact exist as to this question. Furthermore, based on the record, the Court is unable to meaningfully compare defendants' warranties – to the extent they exist – against plaintiff's. Plaintiff is not entitled to summary judgment absent a showing that the warranties it provides materially differ from any coverage defendants offer (either by virtue of defendants not offering warranties, at all, or because they provide materially inferior warranties).

As to differences in accessories, it is not apparent from the record that defendants include improper or inferior accessories with goods they sell either as their practice or unintentionally, but regularly. Plaintiff has identified some instances when defendants sold goods with such accessories, but it is unclear if these were just a handful of stray fulfillment errors. In the

absence of a reliable showing of their frequency or cause, the Court declines to hold that these

incidents indicate a material difference between the goods sold by plaintiff and defendants that

consumers would consider in making their purchases.

Turning to plaintiff's arguments that packaging and labeling distinctions between its

goods and defendants' create a material difference, it is not clear that a reasonable consumer

would deem these relevant or likely be confused by them. The Court reaches the same

conclusion with plaintiff's claims about tracking codes. As to both, a jury could reasonably

come out either way.

SO ORDERED.

U.S.D.J.

Dated: Brooklyn, New York

June 20, 2018

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