UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL **'O'**

Case No.	2:18-cv-02960-CAS(Ex)	Date	February 11, 2019
Title	BOOST BEAUTY, LLC. V. WOO SIGNATURES, LLC. et al.		

Present: The Honorable	CHRISTINA A. SNYDER	
Catherine Jeang	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBERS) - DEFENDANT'S MOTION TO DISMISS (Dkt. [33], filed November 27, 2018)

I. INTRODUCTION

Before the Court is a motion to dismiss plaintiff Boost Beauty, LLC's ("Boost Beauty") third amended complaint. On April 9, 2018, Boost Beauty filed this action against defendants Woo Signatures, LLC ("Woo Signatures"), Tadeh Booghosianssardabi, Farshid Karamzad Goflsaz, Arash Sedighi, and Does 1 through 10 (collectively, "defendants"). Dkt. 1. On June 7, 2018, plaintiff filed a first amended complaint. Dkt 17. In response to defendants' motion to dismiss, the Court dismissed plaintiff's FAC, with leave to amend, on July 23, 2018. Dkt. 25 . Plaintiff filed a second amended complaint on August 17, 2018. Dkt. 26 ("SAC"). On October 15, 2018, the Court dismissed two claims in plaintiff's SAC, with leave to amend, in response to defendants' motion to dismiss. Dkt. 31 ("Oct. Order"). On November 13, 2018, plaintiff filed a third amended complaint. Dkt. 32 ("TAC").

Plaintiff asserts the same eleven claims in its TAC as in its initial complaint: (1) copyright infringement, in violation of the Copyright Act, 17 U.S.C. § 501 et seq.; (2) contributory copyright infringement; (3) vicarious copyright infringement; (4) intentional fraud, as against Sedighi; (5) breach of implied contract; (6) trademark infringement and counterfeiting, in violation of the Lanham Act, 15 U.S.C. § 1114; (7) unfair competition and false designation of origin, in violation of the Lanham Act, 15 U.S.C. § 1125(a); (8) trademark infringement under California common law; (9) violation of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq.; (10) trademark infringement by imitating and false advertising, in violation of the Lanham Act, 15 U.S.C. §§ 1114(a)–(b); and (11) common law unfair competition and false designation of origin. In brief, plaintiff alleges that defendants engaged in a scheme to

product that plaintiff produces, markets, and sells. Specifically, plaintiff alleges that defendants copied its signature eyelash enhancement product by using plaintiff's manufacturer, by unlawfully copying plaintiff's copyrighted online advertisement (the "Work"), and by unlawfully using variations of the term "BoostLash," plaintiff's trademarked product name (the "Mark"), as a search engine adword.

On November 27, 2018, defendants filed the instant motion to dismiss. Dkt. 33 ("Mot.). Plaintiff filed an opposition on December 17, 2018, dkt. 34 ("opp'n"), and defendants filed their reply on December 21, 2018, dkt. 36 ("reply"). The Court held a hearing on February 4, 2019. Having carefully considered the parties' arguments, the Court finds and concludes as follows.

II. BACKGROUND

Plaintiff alleges the following facts.

Plaintiff is a California limited liability company with its principal place of business in Glendale, California. TAC ¶ 7. Woo Signatures is a California limited liability company with its principal place of business also in Glendale, California. Id. ¶ 8. Booghosianssardabi, Goflsaz, and Sedighi are the principals of Woo Signatures, and are individuals residing in Los Angeles County. Id. ¶ 9.

A. Plaintiff's Business

Plaintiff alleges that it procures, advertises, distributes, and sells an eyelash enhancement product called BoostLash. Id. ¶ 27. Plaintiff began the business in 2016 and applied for and obtained a trademark registration for the Mark. Id. ¶¶ 27, 33. Plaintiff alleges that the Product garnered commercial success, becoming a "highly-sought after commodity" because BoostLash is a relatively low-cost product, available to consumers across all economic groups, which is sold online. Id. ¶¶ 28, 30.

To market the product, plaintiff created advertisements composed of "specific words and language in a specific order, which, as . . . plaintiff figured out, would facilitate more end users to its website and, ultimately, to purchase the Product." Id. ¶ 34. In March 2018, plaintiff filed an application with the U.S. Copyright Office for copyright registration of the advertisement, a copy of which plaintiff attached to its third amended complaint. Id. ¶¶ 35, 36; Ex. A. The advertisement features three areas of text: the first, across the top, states "'Top 5' Eyelash Growth Serums | 2018's Best Eyelash Enhancers," and contains additional product attributes below; the second, on the bottom left, states

"Product Comparison Chart," which urges consumers to "compare performances"; and the last, on the bottom right, states "Which is Best for You." TAC, Ex. A. Plaintiff's registration application for this advertisement is pending. Id. ¶ 36.

Exhibit A, Plaintiff's Advertisement, for which it has applied for Copyright Registration

B. Defendants' Alleged Misconduct

i. Sedighi's Alleged Intentional Fraud and Woo Signatures' Breach of Implied Contract

Plaintiff alleges that Sedighi and a principal at Boost Beauty lived together for five years, during which time Sedighi gained confidential information about plaintiff's business model, strategies, product, and suppliers. Id. ¶¶ 38–41, 82–83. Plaintiff alleges that, in November 2017, the named individual defendants unlawfully employed plaintiff's manufacturer to produce a competing eyelash enhancement product, called their product a similar name, purchased the domain name for WooLash, and began selling the product. Id. ¶¶ 43, 45. Plaintiff alleges that defendants produced their competing product despite the fact that Sedighi agreed that any information he learned from Boost Beauty's principal would remain confidential, and that Sedighi would not use the information for personal benefit without the consent of Boost Beauty's principal. Id. ¶¶ 40, 83–84.

ii. Defendants' Alleged Direct, Contributory, and Vicarious Copyright Infringement

Plaintiff avers that in November 2017, when defendants launched their competing business, they "word for word" "copied [] plaintiff's advertisement (but ran the advertisement only outside of California in the hopes plaintiff would not become aware

"were intentionally unlabeled and source-ambiguous in that an ordinary consumer of the [p]roduct would not be able to tell, unless investigating closely, that the advertisement did not belong to plaintiff." Id. ¶ 44. Plaintiff asserts that defendants knew the Work was an original expression owned by plaintiff, and that defendants used, republished, distributed, and displayed the Work to the public without authorization, which has caused plaintiff economic injury. Id. ¶¶ 51–53. Plaintiff claims contributory and vicarious copyright infringement against all defendants. Id. ¶¶59–60, 65–67.

iii. Defendants' Alleged Trademark Infringement, Counterfeiting, Unfair Competition, and False Advertising

Plaintiff also claims that in November 2017, defendants "purchased the Google AdWords 'boost' and 'lash' together in that order as a search engine advertisement to drive traffic to their website." Id. ¶ 43. Plaintiff contends that defendants willfully adopted and used in commerce a confusingly similar or identical version of the Mark without plaintiff's consent, and that "Defendants have engaged in acts of direct infringement by using a sham version of the Mark to sell their products without Plaintiff's consent." Id. ¶¶ 92–93. Plaintiff also alleges that such acts of direct infringement amount to false or misleading advertising and unfair competition, and that as a result, plaintiff has lost out on revenues. Id. ¶¶ 115–16. Plaintiff asserts that defendants pursued this conduct in order to mislead unsophisticated consumers into believing that defendants' product is endorsed by plaintiff. Id. ¶¶ 29, 45. This, plaintiff claims, would persuade consumers into purchasing defendants' identical but competing product instead of plaintiff's. Id. ¶¶ 43, 45.

III. LEGAL STANDARDS

A motion pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in a pleading. Under this Rule, a district court properly dismisses a claim if "there is a 'lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.'" Conservation Force v. Salazar, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting Balisteri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)). "[A]llegations in a complaint . . . may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels

and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "[F]actual allegations must be enough to raise a right to relief above the speculative level." Id.

In considering a motion pursuant to Rule 12(b)(6), a court must accept as true all material allegations in the pleading, as well as all reasonable inferences to be drawn from them. Pareto v. FDIC, 139 F.3d 696, 699 (9th Cir. 1998). The pleading must be read in the light most favorable to the nonmoving party. Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). However, "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009); see Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) ("[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief."). Ultimately, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679.

Unless a court converts a Rule 12(b)(6) motion into a motion for summary judgment, a court cannot consider material outside of the pleading (e.g., facts presented in briefs, affidavits, or discovery materials). In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1537 (9th Cir. 1996), rev'd on other grounds sub nom Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998). A court may, however, consider exhibits submitted with or alleged in the complaint and matters that may be judicially noticed pursuant to Federal Rule of Evidence 201. In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).

As a general rule, leave to amend a complaint which has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

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