

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADOBE SYSTEMS INCORPORATED,
 Plaintiff,
 v.
 MY CHOICE SOFTWARE, LLC, et al.,
 Defendants.

Case No. 14-cv-02150-BLF

**ORDER DENYING MOTION TO
 DISMISS; DENYING ALTERNATIVE
 MOTION FOR MORE DEFINITE
 STATEMENT; AND DENYING
 MOTION FOR TRANSFER**

[Re: ECF 24]

Plaintiff Adobe Systems, Inc. (“Adobe”) asserts trademark, copyright, and related claims against My Choice Software, LLC (“My Choice”) and two of its part-owners, Nathan Mumme (“Mumme”) and Daniel Parker (“Parker”) (collectively, “Defendants”), based upon their alleged sales of pirated, counterfeit, and otherwise unauthorized Adobe software products. Before the Court are (1) Defendants’ motion to dismiss the operative first amended complaint (“FAC”) under Federal Rule of Civil Procedure 12(b)(6); (2) Defendants’ alternative motion for more definite statement under Federal Rule of Civil Procedure 12(e); and (3) Defendants’ motion for transfer of venue to the Central District of California under 28 U.S.C. § 1404(a). The Court has considered the briefing and the oral argument presented at the hearing on November 13, 2014. For the reasons discussed below, the motion to dismiss is DENIED, the alternative motion for more definite statement is DENIED, and the motion for transfer is DENIED.

I. BACKGROUND¹

Adobe is a corporation organized under the laws of Delaware with its principal place of business in San Jose, California. Adobe develops and distributes computer software. It has

¹ The facts contained in the Background section are drawn from the FAC, the well-pled allegations of which are accepted as true for purposes of this motion.

gained significant common law trademark recognition of its ADOBE and ACROBAT marks, has obtained registrations for its ADOBE and ACROBAT marks from the United States Patent and Trademark Office, and has obtained registrations for copyrightable ADOBE ACROBAT software and other software from the United States Copyright Office.²

My Choice is a limited liability company organized under the laws of California with its principal place of business in Mission Viejo, California. My Choice was authorized to distribute Adobe's software under certain terms pursuant to an "Adobe Partner Connection Program Reseller Agreement" ("Agreement"). *See* FAC Exh. C.³ Adobe claims that My Choice breached the Agreement and infringed upon Adobe's trademarks and copyrights by ordering Adobe software products from unauthorized distributors, selling licenses for counterfeit and/or unauthorized OEM software products, and selling electronic software downloads without a license. Adobe asserts the following claims against My Choice, Mumme, and Parker: (1) infringement of registered trademarks under 15 U.S.C. § 1114; (2) false designation of origin, false or misleading advertising, and unfair competition under 15 U.S.C. § 1125(a); (3) dilution under 15 U.S.C. § 1125(c); (4) copyright infringement under 17 U.S.C. § 501(a); (5) unlawful, unfair, and fraudulent business practices under § 17200; and (6) breach of contract.

II. MOTION TO DISMISS AND MOTION FOR MORE DEFINITE STATEMENT

A. Legal Standard

1. Motion to Dismiss

"A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted 'tests the legal sufficiency of a claim.'" *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as true all well-pled factual allegations and construes them in the light most favorable to the

² Non-exhaustive lists of Adobe's trademark and copyright registrations are attached to the FAC as Exhibits A and B, respectively.

³ Because the Agreement has been filed under seal, its terms are not discussed with specificity

plaintiff. *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court need not “accept as true allegations that contradict matters properly subject to judicial notice” or “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted). While a complaint need not contain detailed factual allegations, it “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

2. Motion for More Definite Statement

Under Federal Rule of Civil Procedure 12(e), “[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). “However, motions for a more definite statement are disfavored, and ordinarily restricted to situations where a pleading suffers from unintelligibility rather than want of detail.” *I.R. ex rel. Nava v. City of Fresno*, No. 1:12-CV-00558 AWI GSA, 2012 WL 3879974, at *1 (E.D. Cal. Sept. 6, 2012) (internal quotation marks and citations omitted). A Rule 12(e) motion must be denied “if the complaint is specific enough to notify defendant of the substance of the claim being asserted,” or “if the detail sought by a motion for a more definite statement is obtainable through the discovery process.” *Id.*

B. Discussion

1. Trademarks and Copyrights are Adequately Identified

Defendants argue that Claims 1-4, Adobe’s trademark and copyright claims, “fail[] to identify the trademarks or copyrights that Defendants purportedly infringed upon.” Mot. at 3, ECF 24-1. The Court disagrees. The FAC alleges that on October 9, 2013, Adobe’s investigator paid \$97.41 to buy a purported “Adobe Acrobat X Standard - PC – OEM Download” from mychoicesoftware.com. FAC ¶ 36, ECF 17. The investigator was provided with installation

instructions and a serial number to activate the download. *Id.* ¶ 37. The FAC alleges that the

1 serial number was an “unauthorized OEM product not for resale” and thus that the sale violated
 2 Adobe’s rights in its “A,” “ADOBE,” and “ACROBAT” word and design trademarks. *Id.* ¶ 38.
 3 The FAC identifies, by registration number, twenty-nine specific trademarks and one copyright
 4 allegedly violated by the sale of the download to the investigator. *Id.* When Adobe conducted
 5 further investigation regarding Defendants, it discovered facts leading it to believe that
 6 Defendants’ primary business is selling pirated and otherwise unauthorized downloads of Adobe’s
 7 products and, indeed, that Defendants entered into the Agreement with Adobe to give its activities
 8 the appearance of legitimacy. *Id.* ¶¶ 39-41.

9 The FAC describes several ways in which Defendants allegedly obtain pirated and
 10 otherwise unauthorized versions of Adobe’s software for resale to Defendants’ customers. For
 11 example, it is alleged that Defendants illegally copy trial versions of Adobe’s software and then
 12 resell those trial versions as fully functioning versions to My Choice customers. *Id.* ¶¶ 42-46.
 13 Defendants also allegedly sell OEM software directly to customers in violation of the Agreement,
 14 which provides that the software is to be provided only in bundled sales with new purchases of
 15 specific hardware. *Id.* ¶ 47. In addition, Defendants allegedly sell EDU products, which are to be
 16 provided only to certain qualifying customers, to any customers who request them. *Id.* ¶ 48. The
 17 FAC alleges, on information and belief, that in addition to the trademarks and copyrights
 18 identified in paragraph 38, Defendants’ may have infringed Adobe’s rights in other trademarks
 19 and copyrights, including those listed in Exhibits A and B to the FAC. *Id.* ¶ 38.

20 These allegations are more than adequate. Defendants’ argument that Adobe has identified
 21 too many trademarks and copyrights is unpersuasive. This case is wholly distinguishable from
 22 *Four Navy Seals v. Associated Press*, 413 F. Supp. 2d 1136, 1148 (S.D. Cal. 2005), relied upon by
 23 Defendants, in which the court found inadequate an allegation that “at least one unidentified
 24 photograph” out of a pool of 1,800 photographs had “been copyrighted by an unidentified ‘NAVY
 25 SEAL ONE.’” Here, Adobe has provided the registration numbers of twenty-nine trademarks and
 26 one copyright that Adobe contends were infringed by Defendants’ sale of a particular download to
 27 Adobe’s investigator. To the extent that Defendants contend that not all of the identified

28 registration numbers actually relate to the downloaded Acrobat X product purchased by the

investigator, that is a factual challenge to the FAC that is not appropriately raised in the context of a Rule 12(b)(6) motion. Moreover, Defendants have not demonstrated any impropriety in Adobe's inclusion of appendices listing trademark and copyright registration numbers that it believes Defendants may have infringed in *other* transactions. The inclusion of those appendices does not render any less definite Adobe's allegations regarding the download purchased by its investigator, and it puts Defendants on notice that Adobe will be seeking information during discovery regarding what Adobe believes to be extremely egregious and widespread infringement of its rights by Defendants. Adobe has described several methods by which it believes Defendants have obtained and improperly resold Adobe software products. The fact that the precise scope of Defendants' misconduct (if any) remains to be fleshed out in discovery does not render the FAC inadequate.

Accordingly, Defendants' motion to dismiss and alternative motion for a more definite statement based upon Adobe's asserted failure to identify the relevant trademarks and copyrights are DENIED.

2. Breach of the Agreement is Adequately Alleged

Defendants argue that Claims 5-6, for violation of California's UCL and breach of contract, respectively, "fail[] to define the nature of the breach giving rise to the purported unfair business practices in which Defendant allegedly engaged." Mot. at 4, ECF 24-1. As an initial matter, it is unclear why Defendants believe that a failure to allege breach of contract would be dispositive of Adobe's UCL claim. In order to state a claim for relief under the UCL, Adobe must allege facts showing that Defendants engaged in an "unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. "Because the statute is written in the disjunctive, it is violated where a defendant's act or practice violates any of the foregoing prongs." *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012). Adobe adequately has alleged claims of unlawful conduct under the Lanham Act and the Copyright Act, as discussed above, and thus it has alleged a violation of the UCL. Moreover, although the FAC does not identify the specific sections of the Agreement breached by Defendants' conduct, the FAC identifies that conduct with

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