UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: NEO WIRELESS, LLC -------------------- NEO WIRELESS LLC, Plaintiff, v. VOLKSWAGEN GROUP OF AMERICA, INC. & VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC, Defendants.	MDL Case No.: 2:22-md-3034 E.D. Mich. Case No. 2:22-cv-11404 Hon. Terrence G. Berg

VOLKSWAGEN DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

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This case is on all fours with *Michigan Motor Technologies LLC v. Volkswagen Aktiengesellschaft*, 472 F. Supp. 3d 377 (E.D. Mich. 2020). There, the plaintiff's allegations of willfulness consisted of assertions that the defendants (i) received a notice letter advising them of the patents and (ii) continued the infringing conduct after receiving the letter. *Id.* at 380. Those allegations, Judge Lawson held, were insufficient. A complaint asserting willfulness must *plausibly allege* both "[p]rior knowledge of the patent *and* that the conduct is infringing," *id.* at 383 (emphasis added), as well as "conduct r[ising] to the level of egregiousness that might support an award of enhanced damages," *id.* at 385. "By that measure, the [complaint's] allegations of willful infringement c[ame] up short," because there were "too many dots to connect" to arrive at a finding that the defendants knew of the patents, knew they were infringing, and behaved egregiously. *Id.* at 384–85.

The factual allegations here are virtually identical to those in *Michigan Motor*. NEO alleges that it sent the Volkswagen Defendants' parent company a letter listing the patents and proclaiming that they "cover certain 3GPP wireless standards"; that Defendants later received the letter; and that Defendants did not take a license to the patents and instead continued their allegedly infringing conduct, Am. Compl. ¶ 69, ECF No. 30, PageID.733. As in *Michigan Motor*, those allegations are "not sufficient to allege willful infringement [or] support enhanced damages." 472 F. Supp. 3d at 385. NEO's "purely conclusory" assertion that Volkswagen received a

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notice letter is "not entitled to be assumed true," so NEO has not adequately pleaded knowledge of the patents or of infringement. *Id.* at 384 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009)). Moreover, even if receipt of the letter *had* been plausibly alleged, that would still not be sufficient. That fact—standing alone—does not plausibly suggest intentional infringement or conduct at "the level of egregiousness that might support an award of enhanced damages." *Id.* at 384–85. At best, such an allegation is "'merely consistent with'" willfulness and therefore "'stops short of the line between possibility and plausibility.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 557 (2006)).

I. NEO fails to plausibly allege knowledge of the patents.

As said, NEO's conclusory assertion that Volkswagen received its notice letter—which the complaint admits NEO did not send to either named Defendant—is insufficient to plausibly allege that Volkswagen had knowledge of the patents. *Michigan Motor*, 472 F. Supp. 3d at 384; Op. Br. 2–5, PageID.2129–32. And NEO's attempt (at 13–14) to distinguish this case from *Michigan Motor* lacks merit. The key point is that, in both cases, the plaintiff alleged that the defendants received a notice letter on a certain date. *Compare Michigan Motor*, 472 F. Supp. 3d at 380, *with* Am. Compl. ¶ 69, ECF No. 30, PageID.733. As in that case, this allegation, without more, is too conclusory to be entitled to a presumption of truth. *See Michigan Motor*, 472 F. Supp. 3d at 384.

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