

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PADO, INC. and HOMELEC KOREA CO.,  
LTD.,

Plaintiffs,

-against-

**MEMORANDUM AND ORDER**  
19-CV-6614 (RPK) (RER)

SG TRADEMARK HOLDING CO LLC,  
WIEDER AND FRIEDMAN  
ENTERPRISES, MOSHE FRIEDMAN  
a/k/a COY WEST, HERSCHEL  
FRIEDMAN, ABC CORPORATIONS  
1-10, and JOHN DOES 1-10,

Defendants.

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RACHEL P. KOVNER, United States District Judge:

Plaintiffs Pado, Inc. (“Pado”) and Homelec Korea Co., Ltd. (“Homelec”), makers of the “Purewave” massage device, filed this suit alleging that the makers of the competing “Mighty Bliss” device infringed their patent, copyright, and trademark rights under federal and New York law. Plaintiffs also bring claims for various torts under New York law. In the operative complaint, plaintiffs name as defendants SG Trademark Holding Co., LLC (“SG”) and Wieder and Friedman Enterprises, Inc. (“Wieder”) (together, the “Corporate Defendants”). Plaintiffs also name as defendants Moshe Friedman, whom plaintiffs allege to be the sole owner of SG, and Herschel Friedman, whom plaintiffs allege to be an agent of SG and the owner of Wieder (together, the “Individual Defendants”). The Individual Defendants have moved to dismiss plaintiffs’ claims against them under Federal Rule of Civil Procedure 12(b)(6), arguing that the complaint does not adequately plead that they are personally liable for SG and Wieder’s alleged misconduct. For the reasons below, plaintiffs’ claim of direct patent infringement against the Individual Defendants is dismissed. The motion to dismiss is otherwise denied.

## BACKGROUND

### I. The Parties

Since 2015, Pado has sold, marketed, and distributed a line of handheld massagers under the brand “Purewave.” Second Am. Compl. ¶ 26 (“SAC”) (Dkt. #32). Pado asserts nationwide common law trademark rights in that mark. *Id.* ¶ 27. Homelec designs and manufactures electronic massagers. *Id.* ¶ 7. It licenses to Pado patent number D855,197 (“the ’197 Patent”), a massager-related patent that is used in Purewave devices. *Id.* ¶¶ 6-7, 16-20, 25.

Defendants SG and Wieder sell a competing massager under the brand “Mighty Bliss.” *Id.* ¶¶ 8-9. According to the complaint, SG holds federal registrations for the trademarks “MIGHTY BLISS” and “PURWAVE” for handheld massagers. *Ibid.* Wieder is the exclusive licensee of those marks. *Ibid.* Plaintiffs also name as a defendant Moshe Friedman, who is alleged to be “the sole owner” of SG, *id.* ¶ 52; *see id.* ¶ 10, and Herschel Friedman, who is alleged to be “the owner” of Wieder, *id.* ¶ 65, as well as “an agent” of SG, *id.* ¶ 11.

### II. Procedural History

Pado filed this action in November 2019 against SG, the Individual Defendants, and several unnamed corporations and individuals. *See* Compl. (Dkt. #1). On January 28, 2020, plaintiffs filed the operative Second Amended Complaint, which added Homelec as a plaintiff, Wieder as a defendant, and several new claims and theories of liability. *See generally* SAC.

The Second Amended Complaint contains 11 claims. These include nine claims against the Individual Defendants: direct and induced patent infringement (Count I), direct and vicarious copyright infringement (Count II), trademark infringement and unfair competition (Counts III-V, X), and various claims under New York tort law (Counts VI, VII, IX). *See generally* *ibid.*

Count I alleges that the Corporate and Individual Defendants have infringed the '197 patent. *Id.* ¶¶ 39-51, 146-152. Plaintiffs allege that, as of the date plaintiffs served the complaint and summons on the defendants, “all Defendants had actual knowledge of the '197 Patent” and had “actual knowledge” that the Mighty Bliss massager infringed that patent, or intentionally avoided such knowledge. *Id.* ¶¶ 43, 48-49. The complaint also alleges, on information and belief, that the Individual Defendants are both “personally responsible for product development, product design, marketing, and sales at the Corporate Defendants,” are “essential to the operations of the Corporate Defendants,” *id.* ¶¶ 52, 65, and “encouraged and induced the Corporate Defendants to continue to sell the Mighty Bliss massager despite being aware of the '197 Patent,” *id.* ¶ 50. Plaintiffs also allege that, after learning of the '197 Patent, the Individual Defendants “personally directed and authorized” the manufacture, use, and sale of the allegedly infringing Mighty Bliss device, including by creating and maintaining “websites and online stores” and by creating “advertising and marketing material” used to sell the device. *Id.* ¶¶ 148-149. The complaint includes photos comparing the appearance and design of the Mighty Bliss device that the Individual Defendants allegedly designed with the device depicted in the '197 Patent. *See id.* at 10-11. Plaintiffs allege that the two devices are “highly similar in appearance.” *Id.* ¶ 56.

Count II alleges that the Corporate and Individual Defendants infringed plaintiffs' copyrighted user manuals and marketing materials for the Purewave device. *Id.* ¶¶ 67-80; 153-161. According to the complaint, several sections of the Mighty Bliss user manual contain language that is “identical and[/]or strikingly similar” to language in the Purewave manual. *Id.* ¶¶ 68-77. The complaint alleges that the Individual Defendants “personally directed and authorized the creation and distribution of the infringing advertising and promotional material,” “authorized

the infringing activity,” “were dominant influences in the Corporate Defendants,” and “determined the policies which resulted in the infringements.” *Id.* ¶¶ 155-158; *see id.* ¶¶ 76, 80.

Counts III, IV, and V allege that the Corporate and Individual Defendants infringed plaintiffs’ trademark rights in the PUREWAVE mark by including in the Mighty Bliss user manual the term “Pure Wave.” *Id.* ¶¶ 162-180; *see id.* ¶¶ 81-88. The complaint alleges that “the Individual Defendants personally directed and authorized” the creation, distribution, and use of the infringing materials. *See id.* ¶¶ 165, 173, 178. Count X alleges that the Corporate and Individual Defendants made false and misleading representations in violation of the Lanham Act, 15 U.S.C. § 1125, by filing complaints with Amazon, Facebook, Instagram, and Twitter claiming that Pado’s Purewave device infringed SG’s Purwave trademark. *Id.* ¶¶ 120-143, 218-232. In response to these complaints, Amazon removed Pado’s Purewave device from its platform and the social media companies removed or considered removing Pado’s Purewave social media accounts. *Id.* ¶¶ 120-126. Plaintiffs allege that as a result, they suffered monetary losses and loss of goodwill. *Id.* ¶¶ 144-145. The complaint further alleges that the Individual Defendants directed their attorney to file the complaints with Amazon and the social media companies. *Id.* ¶ 128.

Counts VI, VII, and IX allege that the Corporate and Individual Defendants violated New York General Business Law and common law. *See id.* ¶¶ 181-189, 200-217. In particular, Counts VI and VII allege that the Corporate and Individual Defendants violated New York law because they diluted SG’s trademark, and because their acts constituted misleading and deceptive trade practices. *See id.* ¶¶ 181-189. Count IX alleges that the Corporate and Individual Defendants tortiously interfered with plaintiffs’ contractual relations with Amazon and with social media companies by filing infringement complaints with those companies. *See id.* ¶¶ 200-217.

The complaint also contains allegations regarding the Individual Defendants' roles at SG and Wieder. Plaintiffs allege, on information and belief, that "Moshe Friedman is the sole owner of [SG]," *id.* ¶ 52, and "co-designed and developed the Infringing Products for the Corporate Defendants," *id.* ¶¶ 53, 59. The complaint supports these pleadings with additional allegations—not on information and belief—that Moshe Friedman is "a named co-inventor" of a patent for a "cordless massager" that is owned by SG ("the '295 Patent"), *id.* ¶ 54, and that Moshe Friedman communicates with SG's customers under the alias "Coy West," *id.* ¶ 60. Plaintiffs attached to the complaint a letter from "Coy West" in which "Coy" represents himself to be the "owner of Mighty Bliss" and requests a positive review. *Id.*, Ex. 11. The return address is alleged to be that of Moshe Friedman. *See ibid.*

As for Herschel Friedman, the complaint alleges, on information and belief, that he is "an agent of" SG and "the owner of" Wieder. *Id.* ¶ 11; *see id.* ¶ 65. It further alleges that Herschel Friedman's "home address is the same as" Wieder's "business address." *Id.* ¶ 66. The complaint also alleges that "according to the New York Department of State online database," Herschel Friedman "accepts service" for SG. *Id.* ¶ 64.

Plaintiffs further allege, on information and belief, that both Moshe Friedman and Herschel Friedman "[have] personally participated in and [have] willfully and knowingly directed the wrongful acts of the Corporate Defendants," and did so "for the benefit of the Corporate Defendants and for [their] own benefit." *Id.* ¶¶ 10-11.

The Individual Defendants have moved to dismiss all claims against them for failure to state a claim. *See* Mot. to Dismiss ("Defs.' Br.") (Dkt. #67-1).

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