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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHILIPS NORTH AMERICA, LLC,
et al.,

Plaintiffs,

v.

SUMMIT IMAGING INC., et al.,

Defendants.

CASE NO. C19-1745JLR

ORDER

I. INTRODUCTION

Before the court is Defendants Summit Imaging Inc. (“Summit”) and Lawrence R. Nguyen (collectively, “Defendants”) Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. (Mot. (Dkt. # 26); *see also* Reply (Dkt. # 29).) Plaintiffs Philips North America LLC, Koninklijke Philips N.V., and Philips India Ltd. (collectively, “Philips”) oppose the motion. (Resp. (Dkt. # 28).) The court has reviewed the motion, the parties’ submissions in support of and in opposition to the motion, the relevant portions of the record, and the

1 applicable law. Being fully advised, the court GRANTS in part and DENIES in part
2 Defendants' motion to dismiss.¹

3 II. BACKGROUND

4 Philips manufactures, sells, and services medical imaging systems—including
5 ultrasound systems, computed tomography scanners, positron emission tomography
6 scanners, X-ray machines, magnetic resonance scanners, and nuclear medicine
7 scanners—for hospitals and medical centers. (*See* Am. Compl. (Dkt. # 23) ¶¶ 1, 21.)
8 The vast majority of the allegations in the complaint relate to Philips' ultrasound imaging
9 devices. Philips sells and services ultrasound imaging devices under the "CX,"
10 "HD," "ClearVue," "Sparq," "VISIQ," "Xperius," "Affiniti," and "EPIQ" brand names
11 (collectively, the "Ultrasound Systems"). (*Id.* ¶ 23.) In addition to the Ultrasound
12 Systems, Philips manufactures and sells related ultrasound hardware devices. (*See id.*)
13 The Ultrasound Systems are driven by one of two software platforms that Philips
14 developed and owns: (1) Philips Voyager Platform and (2) Philips Common Platform.
15 (*See id.* ¶¶ 26-27, 29.)

16 Each Ultrasound System Philips sells includes certain software and hardware
17 features that may only be used when Philips enables a particular licensable feature for the
18 specific Ultrasound System. (*Id.* ¶ 33.) For each Ultrasound System, Philips enables
19

20 ¹ Defendants requested oral argument on the motion (*see* Mot. at 1), but Philips did not
21 (*see* Resp. at 1). The parties thoroughly briefed the issues, and the court finds that this matter
22 can be decided on the parties' papers. Thus, the court DENIES Defendants' request for oral
argument. *See* Local Rules W.D. Wash. LCR 7(b)(4) ("Unless otherwise ordered by the court,
all motions will be decided by the court without oral argument.").

1 only the licensed features and tools that their customers purchased for that specific
2 system, and only the specific authorized users of the machine can access the enabled
3 features and software options. (*Id.*) Philips has registered the copyright in the software
4 for the different Ultrasound Systems they sell (*see id.* ¶ 30, Ex. A), and allege that they
5 “use[] multiple layers of technological controls to protect” their copyrighted works from
6 unauthorized access (*see id.* ¶ 32). Philips alleges that their software and access control
7 systems are trade secrets and that those systems contain other trade secret information.
8 (*See, e.g.*, ¶ 134.)

9 Philips alleges that Summit hacks into Philips’ software and alters the Ultrasound
10 Systems using a program Summit developed called Adepto in order to enable features or
11 options for which Philips’ customers have not paid Philips. (*See id.* ¶¶ 4-6.) Philips
12 claims that Summit trains its customers on how to circumvent Philips’ access controls.
13 (*See id.* ¶ 7.) Summit allegedly advertises that its Adepto tool is a “legal solution” or a
14 “legal alternative” to working with Philips in order to enable additional features and
15 options. (*See id.* ¶ 8.) Mr. Nguyen is the “principal owner, Governor, Chief Executive
16 Officer, and Chief Technology Officer of Summit.” (*Id.* ¶ 14.) Philips alleges that Mr.
17 Nguyen designed, directed, and carried out Summit’s hacking scheme. (*See, e.g., id.*
18 ¶¶ 39, 42, 53, 59, 62-63, 89-100.)

19 Philips brings seven causes of action against Defendants: (1) circumventing a
20 technological measure in violation of the Digital Millennium Copyright Act (“DMCA”),
21 17 U.S.C. § 1201; (2) modifying copyright management information (“CMI”) in violation
22 of the DMCA, 17 U.S.C. § 1202; (3) trade secret misappropriation in violation of the

1 Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836; (4) trade secret misappropriation
2 in violation of the Washington Uniform Trade Secrets Act (“UTSA”), RCW ch. 19.108;
3 (5) false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
4 § 1125(a); (6) unfair competition in violation of the Washington Consumer Protection
5 Act (“CPA”), RCW 19.86.020 *et seq.*; and (7) copyright infringement in violation of the
6 Copyright Act, 17 U.S.C. §§ 101, 501. (*See Am. Compl.* ¶¶ 73-218.)

7 III. ANALYSIS

8 Pursuant to Rule 12(b)(6), Defendants move to dismiss the following claims for
9 failure to state a claim: Philips’ DMCA claims, DTSA claim, UTSA claim, false
10 advertising claim, CPA claim, and any portion of their copyright infringement claim that
11 alleges contributory copyright infringement. (*See Mot.* at 5-24.) The court sets forth the
12 applicable legal standard before addressing Philips’ causes of action in turn.

13 A. Legal Standard

14 Rule 12(b)(6) provides for dismissal for “failure to state a claim upon which relief
15 can be granted.” Fed. R. Civ. P. 12(b)(6). When considering a motion to dismiss under
16 Rule 12(b)(6), the court construes the complaint in the light most favorable to the
17 nonmoving party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946
18 (9th Cir. 2005). The court must accept all well-pleaded facts as true and draw all
19 reasonable inferences in favor of the plaintiff. *Wylar Summit P’ship v. Turner Broad.*
20 *Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). The court, however, is not required “to
21 accept as true allegations that are merely conclusory, unwarranted deductions of fact, or
22 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th

1 Cir. 2001). “To survive a motion to dismiss, a complaint must contain sufficient factual
2 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*
3 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
4 570 (2007)); *see also Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir.
5 2010). “A claim has facial plausibility when the plaintiff pleads factual content that
6 allows the court to draw the reasonable inference that the defendant is liable for the
7 misconduct alleged.” *Iqbal*, 556 U.S. at 677-78. “A pleading that offers ‘labels and
8 conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not
9 do.’ . . . Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further
10 factual enhancement.’” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555, 557).

11 **B. Summit’s Motion to Dismiss**

12 1. Circumventing a Technological Measure

13 Defendants argue that Philips’ claim for circumventing a technological measure in
14 violation of the DMCA, 17 U.S.C. § 1201 should be dismissed because Philips failed to
15 “allege sufficient facts supporting that a technological measure that effectively controls
16 access to a copyrighted work has been circumvented.” (*See Mot.* at 13.) The Ninth
17 Circuit explains that § 1201 of the DMCA sets forth “two distinct types of claims.” *MDY*
18 *Indus., LLC v. Blizzard Entm’t, Inc.*, 629 F.3d 928, 944 (9th Cir. 2010); *see also* 17
19 U.S.C. § 1201. “First, § 1201(a) prohibits the circumvention of any technological
20 measure that effectively controls access to a protected work and grants copyright owners
21 the right to enforce that prohibition.” *Id.* Section 1201(a)(1)(A) contains a general
22 prohibition against “circumventing a technological measure that effectively controls

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