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County of Los Angeles

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 BODY GLOVE INTERNATIONAL, LLC, a)
California limited liability company,)
12)
Plaintiff,)
13)
v.)
14)
MAVERICKS INVITATIONAL, INC., a)
California corporation; CARTEL)
15 MANAGEMENT, INC., a California)
corporation; GRIFFIN GUESS, an individual;)
16 and DOES 1 through 10, inclusive,)
17)
Defendants.)

Case No. BC 560078
Assigned For All Purposes To The Honorable
Judge Holly Kendig, Dept. 42
**PLAINTIFF BODY GLOVE
INTERNATIONAL, LLC'S
CONSOLIDATED OPPOSITION TO
DEFENDANT MAVERICKS
INVITATIONAL INC.'S DEMURRER
AND CARTEL MANAGEMENT AND
GRIFFIN GUESS'S DEMURRER TO THE
THIRD AMENDED COMPLAINT**
[Appendix of Federal Authorities filed
concurrently herewith.]

FAXED

Hearing
Date: October 25, 2016
Time: 8:30 a.m.
Dept.: 42

Reservation Nos. 160615136569 & 160615136618

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1 **I. INTRODUCTION**

2 This case concerns a popular surf contest that had been entitled the “Body Glove Mavericks
3 Invitational,” but whose brand was deceptively altered by the wrongful conduct of Defendants as
4 alleged in the TAC. Specifically, Defendants launched a campaign in 2015 to promote the contest
5 as the “Titans of Mavericks” while launching a sportswear and apparel line intended to supplant and
6 co-opt the apparel and sportswear for the Body Glove Mavericks Invitational. The TAC alleges
7 claims for Breach of Contract, Specific Performance, and Unlawful Business Practices as to
8 defendant Mavericks Invitational Inc. (“MII”) and Intentional Interference with Contractual
9 Relations and Unlawful Business Practices as to defendants Cartel Management, Inc. (“Cartel”) and
10 Griffin Guess (“Guess”). Defendants’ instant demurrers challenge only one of these claims:
11 Unlawful Business Practices. Accordingly, Defendants do not challenge Body Glove’s claims for
12 breach of contract, specific performance, or intentional interference.

13 Cartel and Guess’ demurrer fails because the intentional interference claim stated against
14 them properly serves as a predicate for the unlawful business practice claim. Specifically, as alleged
15 in the TAC, Cartel and Guess, knew about the agreement between MII and Body Glove to name the
16 contest the “Body Glove Mavericks Invitational” and which granted Body Glove the exclusive right
17 to sell Sportswear related the contest. Further, Cartel and Guess caused MII to breach this
18 agreement by enabling a deceptive brand for the contest and purporting to grant Cartel an exclusive
19 Sportswear license, thereby damaging Body Glove. For this reason alone, Cartel and Guess’s
20 demurrer is misplaced because, as matter of law, intentional interference with a contract is illegal
21 conduct that properly serves as a predicate for unfair competition.

22 In addition, Body Glove alleges that MII pawned off the newfangled “Titans of Mavericks”
23 as the “Body Glove Mavericks Invitational” to consumers, thereby drawing sales and publicity away
24 from the Body Glove Mavericks Invitational and its associated sportswear and apparel. Although
25 such conduct is a breach of contract, it also constitutes false advertising and unfair competition.
26 Accordingly, the Court should overrule Defendants’ single-issue demurrers.

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1 **II. PERTINENT PROCEDURAL HISTORY AND BRIEF STATEMENT OF**
2 **ALLEGATIONS IN THE THIRD AMENDED COMPLAINT**

3 This case concerns the famous surf contest entitled the “Body Glove Mavericks
4 Invitational,” (TAC at 1-43), and Defendants launching of a deceptive brand named “Titans of
5 Mavericks” to disrupt and co-opt Body Glove’s sportswear and apparel for the surf competition,
6 (TAC at 44-60).

7 On February 2, 2015, Body Glove filed its First Amended Complaint (“FAC”) to which
8 Defendants demurred. On August 7, 2015, the Court held a hearing on the Defendants’ demurrers
9 to the FAC and overruled the demurrers with respect to the specific performance claim against MII
10 and the intentional interference claim against Cartel and Guess, holding that both claims had been
11 well-pleaded. (Court’s August 7, 2015 Minute Order.) However, the Court sustained the demurrers
12 with respect to the breach of contract claim against MII and the unfair competition claim, requesting
13 further allegations relating to the element of damages in support of the breach of contract claim and
14 also further allegations regarding how the alleged conduct would constitute an unlawful business
15 practice. (*Id.*)

16 On August 24, 2015, Body Glove filed the SAC. The SAC, as with the FAC, alleges that
17 MII breached its Three Event Title Sponsorship Agreement by, among other things, promoting the
18 surf contest and event as the “Titans of Mavericks,” as opposed to the “Body Glove Mavericks
19 Invitational,” and breaching the exclusive license provided to Body Glove for sportswear related to
20 the event by enabling co-defendant Cartel to launch a competing sportswear line under the moniker
21 of “Titans of Mavericks.” (SAC at 38-41, 45, 50; *cf.* SAC at Exhibit 1.) The SAC contained
22 additional allegations relating to damages from the breach of contract including the loss of payments
23 made under the Agreement, the costs Body Glove incurred in promoting the first event, and lost
24 profits and merchandise sales. (SAC at 47.) The SAC also contained additional allegations relating
25 to MII and Cartel’s competing sportswear line including an exhibit demonstrating the competing
26 merchandise being sold to the public under the “Titans of Mavericks” moniker. (SAC at 59; SAC
27 at Exhibit 2.)

28 On February 12, 2016, the surf contest was staged and Cartel’s rogue “Titans of Mavericks”

1 brand was expanded and further promoted, causing and crystallizing further damages to Body
2 Glove. In light of these supplemental facts, the parties stipulated to the filing of the Third Amended
3 Complaint to allow for supplemental allegations. On May 23, 2016, Body Glove filed its Third
4 Amended Complaint and included a section on the staging of the contest and the further promotion
5 of Cartel's "Titans of Mavericks" brand and further expansion of its deceptive sportswear line.
6 (TAC at 56-64.)

7 In light of the new allegations, MII abandoned its demurrer to the breach of contract cause of
8 action and Defendants were constrained to limit their pleading challenge to the Unlawful Business
9 Practices claim alleged in paragraphs 74 through 82 of the TAC.

10 **III. LEGAL STANDARD FOR A DEMURRER**

11 "A demurrer tests the sufficiency of a complaint by raising questions of law." *Wilner v.*
12 *Sunset Life Ins. Co.*, 78 Cal. App. 4th 952, 958 (2000). In ruling on a demurrer, the court must
13 "treat the demurrer as admitting all facts properly pleaded." *Fox v. Ethicon Endo-Surgery, Inc.*, 35
14 Cal.4th 797, 810 (2005). "[I]t is error for a trial court to sustain a demurrer when the plaintiff has
15 stated a cause of action under any possible legal theory." *Id.*

16 **IV. BODY GLOVE HAS ADEQUATELY PLEADED A CLAIM UNDER THE UNFAIR**
17 **COMPETITION LAW.**

18 California prohibits "unfair competition," which is defined as any "unlawful, unfair, or
19 fraudulent business act or practice ..." Cal. Bus. Prof. Code 17200. Because the text of the unfair
20 competition law is disjunctive, a plaintiff may establish a violation of unfair competition law under
21 any of the three prongs – unlawful, unfair, or fraudulent – which operate independently of each
22 other. *State Farm Fire & Cas. Co. v. Sup. Ct.*, 45 Cal. App. 4th 1093 (1996). Here, Defendants'
23 conduct satisfies these prongs.

24 **A. The Court Should Overrule Cartel And Guess's Demurrer Because Body Glove**
25 **Adequately Pleaded A Claim For Violation Of Unfair Competition Law:**
26 **Intentional Interference With A Contract Is An Unlawful Business Practice.**

27 Unfair competition law embraces anything that can properly be called a business practice
28 and that at the same time is forbidden by law. *CRST Van Expedited, Inc. v. Werner Enters.*, 479 F.

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1 3d 1099, 1107 (9th Cir. 1996). In so doing, unfair competition law “borrows” violations from other
2 laws by making them independently actionable as unfair competitive practices. *Id.* Intentional
3 interference with a contract is a business act that violates a duty imposed by law. *Id.* Accordingly,
4 an intentional interference cause of action properly serves as a predicate for a claim for unlawful
5 business practices under California’s unfair competition law. *Id.*

6 In *Werner Enters*, the plaintiff alleged that the defendant had interfered with its employment
7 contracts in order to poach employees for defendant’s competitive business. *Id.* The plaintiff
8 brought claims for intentional interference and unfair competition. The Ninth Circuit held that the
9 intentional interference claim serves as the predicate “unlawful” business practice for an unfair
10 competition claim and reversed the district court’s decision to dismiss the unfair competition claim:

11 We conclude that [plaintiff] adequately alleged that [defendant] violated the UCL
12 because [plaintiff] adequately alleged that [defendant] engaged in an “unlawful”
13 business act or practice that allegedly harmed [plaintiff], namely, intentional
14 interference with [plaintiff’s] employment contracts. First, [plaintiff’s] allegation
15 of intentional interference by a corporate competitor with the employment
16 contracts [plaintiff] had with two of its drivers clearly alleges a business act or
17 practice. Second, intentional interference with a contract is a tortious violation of
18 duties imposed by law. We need go no further to conclude that the district court
19 must be reversed on its dismissal of Count III. We conclude that [plaintiff]
20 adequately alleged a violation of by [defendant] of the UCL by alleging
21 [defendant] engaged in an “unlawful” business practice, to wit, intentional
22 interference with existing contracts of employment.

23 *Id.* at 1107; *see also Nicolosi Distrib. v. B.M.W. of N. Am., LLC*, Case No. 10-3256, 2011 U.S. Dist.
24 LEXIS 14586 at *12 (N.D. Cal. February 7, 2011) (tortious behavior, such as intentional
25 interference with a contract qualifies as the type of activity proscribed by the UCL)

26 *Werner Enters.* is directly on point. Body Glove has alleged as its fourth cause of action in
27 the TAC a claim for Tortious Interference with Contract against Cartel and Guess. (TAC at 83-91.)
28 In the claim for Tortious Interference, Body Glove alleges, among other things, that Cartel and

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1 Guess knew about the title sponsorship agreement with Body Glove and MII, and intentionally
2 caused MII to breach the agreement by launching a competing and deceptive brand for the surf
3 contest called “Titans of Mavericks.” (TAC at 85.) Likewise, in the claim for Unfair Competition,
4 Body Glove alleges that Cartel and Guess “unfairly and unlawfully” interfered with Body Glove’s
5 sponsorship agreement and business, promoted the event as the “Titans of Mavericks” as opposed to
6 the “Body Glove Mavericks Invitational,” and offered for sale a deceptively similar sportswear
7 apparel line intended to draw sales away from the Body Glove Mavericks Invitational. (TAC at 76-
8 80; TAC at Exhibit 2.) Given that the Tortious Interference claim has already been upheld by the
9 Court, and Cartel and Guess do not and cannot challenge it, as in *Werner Enters.*, 479 F. 3d at 1107,
10 “the Court need go no further” to conclude that Body Glove has properly alleged a claim under
11 California’s unfair competition law as to Cartel and Guess for the simple reason that “intentional
12 interference with a contract qualifies as the type of activity proscribed by the UCL,” *Nicolosi*
13 *Distrib.*, 2011 U.S. Dist. LEXIS 14586 at *12.¹

14 **B. The Court Should Overrule MII’s Demurrer: MII’S Conduct In Promoting**
15 **The “Body Glove Mavericks Invitational” As The “Titans of Mavericks”**
16 **Constitutes False Advertising And “Unfair” Business Practices.**

17 It is a violation of California’s unfair competition law to engage in “unfair” business
18 practices and “false advertising.”

19 The standard for determining whether a business practice is “unfair” is “intentionally broad,
20 thus allowing courts maximum discretion to prohibit new schemes to defraud.” *Ticconi v. Blue*
21 *Shield of California Health & Life Insurance Co.*, 160 Cal. App. 4th 528, 539 (2008) (2d District).
22 While there are several tests applied by different courts within California, the Courts of Appeal in
23 this District apply a test which involves an “examination” of the practice’s “impact on its alleged
24 victim, balanced against the reasons, justifications and motives of the alleged wrongdoer.” *Id.* In

25 _____
26 ¹ Cartel and Guess’s memorandum of points and authorities in support of their demurrer is entirely
27 inapposite and omits any reference to the intentional interference claim stated against them while
28 purposefully conflating their position with that of MII as a contracting party (which is a superficial
complication discussed in the following section).

1 essence, the court “weigh[s] the utility of the defendant's conduct against the gravity of the harm to
2 the alleged victim” *Id.* (internal citation omitted).

3 A “fraudulent business practice” is one which is likely to deceive the public. *McKell v.*
4 *Washington Mutual, Inc.*, 142 Cal. App. 4th 1457, 1471 (2006). Unlike common law fraud, there is
5 no requirement that the plaintiff or others were actually deceived or confused by the alleged
6 business practice. *Progressive West Insurance Company v. Yolo County Superior Court*, 135 Cal.
7 App. 4th 263, 284 (2006).

8 Whether a practice is unfair or fraudulent under the UCL is a question of fact, requiring
9 consideration and weighing of evidence from both sides before it can be resolved, and therefore
10 normally cannot be resolved on demurrer. *McKell, supra*, 142 Cal. App. 4th at 1472-73.

11 Here, Body Glove has alleged that both it and the public were misled by Defendants when
12 Defendants suddenly launched an advertising campaign promoting the “Body Glove Mavericks
13 Invitational” surf contest as the “Titans of Mavericks” and sold sportswear apparel under this new
14 brand name. (TAC at 76-80; *see also* TAC at Exhibit 2.) “The common law tort of unfair
15 competition is generally thought to be synonymous with the act of ‘passing off’ one's goods as those
16 of another.” *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1153 (9th Cir. 2008) (quoting
17 *Bank of the W. v. Superior Court*, 2 Cal. 4th 1254, 1263 (1992) (explaining that the tort provided
18 “an equitable remedy against the wrongful exploitation of trade names and common law trademarks
19 that were not otherwise entitled to legal protection”).

20 By falsely promoting the Body Glove Mavericks Invitational as the “Titans of Mavericks”
21 and selling sportswear under the rogue “Titans of Mavericks” moniker, Defendants are
22 disseminating advertisements and offering goods to the public which are likely to be deceptive and
23 harmful to Body Glove and the public in light of the fact that the purported “Titans of Mavericks”
24 denotes the same surf contest as the Body Glove Mavericks Invitational thereby confusing the
25 public as to the source of the goods and Body Glove’s association with the event. *See, e.g.*,
26 *Celebrity Chefs Tour, LLC v. Macy's, Inc.*, 16 F. Supp. 3d 1159, 1170 (S.D. Cal. 2014) (denying
27 motion to dismiss and upholding UCL claim where defendant advertised and promoted a stolen
28 television show with a similar title).

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1 Defendants attempt to avoid a UCL cause of action by couching MII's conduct as merely
2 and solely a breach of its contract with Body Glove. While MII's conduct was a breach of the
3 exclusive license afforded to Body Glove under the agreement between the parties, it also
4 constitutes unfair competition and false advertising in that Defendants are actively and deceptively
5 misrepresenting the event and its affiliated sportswear to the public. Specifically, Defendants'
6 conduct is deceiving the public as to the sponsorship of the contest and that its sportswear is
7 associated with Body Glove by marketing the rogue "Titans of Mavericks" brand and related
8 apparel in connection with the Body Glove Mavericks Invitational surf contest. (TAC at 76-78.)

9 While more specificity is not required at the pleading stage regarding the utility of MII's
10 conduct versus its effect on Body Glove and the public, the TAC sufficiently alleges that promoting
11 the Body Glove Mavericks Invitational surf contest as the "Titans of Mavericks" unfairly and
12 fraudulently rendered valueless Body Glove's title sponsorship of, and exclusive license to sell
13 sportswear related to, the "Body Glove Mavericks Invitational" and siphons product sales away
14 from the Body Glove Mavericks Invitational.

15 Thus, Body Glove has sufficiently alleged both a fraudulent and unfair business practice and
16 MII's demurrer should be overruled.

17 **V. CONCLUSION.**

18 For the foregoing reasons, Body Glove respectfully request that this Court overrule
19 Defendants' demurrers to the cause of action for unfair competition in their entirety, or,
20 alternatively, permit Body Glove leave to amend to address any purported deficiencies.

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22 Dated: October 11, 2016.

THE ROGSON FIRM

By: 
Yuval M. Rogson
Counsel for Body Glove International, LLC

10/13/2016

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is The Rogson Firm, 1875 Century Park East, Suite No. 1490, Los Angeles, California 90067.

On October 11, 2016, I served the foregoing document: **PLAINTIFF BODY GLOVE INTERNATIONAL, LLC'S CONSOLIDATED OPPOSITION TO DEFENDANT MAVERICK'S INVITATIONAL, INC.'S DEMURRER AND CARTEL MANAGEMENT AND GRIFFIN GUESS'S DEMURRER TO THE THIRD AMENDED COMPLAINT**

BY U.S. MAIL - by placing the document(s) listed above in a sealed envelope addressed as set forth below with postage thereon fully prepaid for first class mail and depositing said documents with the United States Postal Service located in Los Angeles, California. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully pre-paid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing.

X BY OVERNIGHT COURIER. I caused the above-referenced document(s) to be delivered to Federal Express, an overnight courier service, for overnight delivery to the address(es) set forth below.

BY PERSONAL SERVICE. I caused to be delivered such envelope by hand to the addressee(s) set forth below.

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Counsel for Defendants *Cartel Management, Inc. and Griffin Guess*

I declare that I am employed in the office of a member of the bar of this court upon whose direction the service was made.

Executed on October 11, 2016 at Los Angeles, California.


Yuval M. Rogson

PROOF OF SERVICE

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