

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/25/16

DEPT. 42

HONORABLE HOLLY E. KENDIG

JUDGE

S. ONTIVEROS

DEPUTY CLERK

HONORABLE #11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. BYERS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC560078

Plaintiff
Counsel

YUVAL ROGSON (X)

BODY GLOVE INTL LLC
VS

Defendant
Counsel

MAVERICKS INVITATIONAL INC ET A

MARC S. HURD (X)
OMERO BANUELOS (X)

NATURE OF PROCEEDINGS:

DEMURRER OF DEFENDANT MAVERICKS INVITATIONAL INC.,
TO THIRD AMENDED COMPLAINT;

DEMURRER OF DEFENDANT CARTEL MANAGEMENT, INC., AND
GRIFFIN GUESS TO THE THIRD AMENDED COMPLAINT;

CASE MANAGEMENT CONFERENCE

Matter is called for hearing.

RULING

Defendants Cartel Management, Inc. and Griffin
Guess's demurrer to the third cause of action for
unfair business practices is OVERRULED, as set forth
below.

Defendant Mavericks Invitational, Inc.'s demurrer to
the third cause of action for unfair business
practices is OVERRULED, for the reasons set forth
below. The Court's reasoning for its ruling is not
interference with contract, which applies to
Cartel's demurrer, but the reasoning which is set
forth below.

Defendants are ordered to file and serve their
answers to the Third Amended Complaint within 14
days by November 10, 2016.

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NATURE OF PROCEEDINGS:

BACKGROUND

On May 23, 2016, Plaintiff filed the operative TAC, which brings the following causes of action:

1. Breach of Written Contract;
2. Specific Performance;
3. Unfair Business Practices under Business and Professions Code § 17200; and
4. Tortious Interference with Contract.

On June 17, 2016, MII filed a demurrer to the third cause of action for unfair business practices. MII argues that this claim alleges nothing more than a breach of contract and, therefore, does not state any unfair, unlawful, or fraudulent business practices on which a UCL claim may lie. MII contends that the court has already sustained a demurrer to this cause of action as alleged in the FAC on these grounds and that it should do so again here.

On June 22, 2016, Cartel and Guess also filed a demurrer to the third cause of action for unfair business practices that raises many of the same arguments as MII's demurrer.

On October 11, 2016, Plaintiff filed its opposition. Plaintiff asserts that it has included additional facts in the TAC which demonstrate conduct that goes beyond a mere breach of contract and that is likely

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NATURE OF PROCEEDINGS:

to deceive the public with respect to the sponsorship of the event and the apparel for the event. As to Cartel and Guess, Plaintiff argues that their tortious interference with Plaintiff's contract with MII is a predicate offense that gives rise to UCL liability. As to MII, Plaintiff contends that its conduct is both unfair and fraudulent because MII is falsely promoting an event that should be called the "Body Glove Mavericks Invitational" under the false name "Titans of Mavericks." Plaintiff also asserts that selling merchandise related to the event manufactured and branded by a third-party competitor is deceptive to the public.

MERITS

UCL Claim Against MII

The Unfair Competition Law ("UCL") prohibits any unlawful, unfair, or fraudulent business practice. Bus. & Profs. Code, § 17200. A plaintiff alleging unfair business practices under these statutes must state with reasonable particularity the facts supporting the statutory elements of the violation. *Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 619. The person suing for a UCL claim must allege that he suffered injury in fact and has lost money or property as a result of the unfair competition. Bus. & Profs. Code, § 17204.

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NATURE OF PROCEEDINGS:

To bring an action under the "unlawful" prong, section 17200 borrows from other violations of the law and treats them as unlawful practices independently actionable under section 17200. Farmers Ins. Exch. v. Superior Court (1992) 2 Cal.4th 377, 383. An "unfair" business practice must be tethered to a legislatively declared policy or proof of some actual or threatened impact on competition." Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co. (1999) 20 Cal.4th 163, 186-187. In the consumer context, a practice may be unfair if (1) consumer injury is substantial, (2) the injury is not outweighed by any countervailing benefits to consumers or competition, and (3) the injury is one that consumers themselves could not reasonably have avoided. Camacho v. Auto. Club of S. Cal. (2006) 142 Cal.App.4th 1394, 1403. A business practice is "fraudulent" if the public is likely to be deceived. Massachusetts Mutual Life Ins. Co. v. Superior Court (2002) 97 Cal.App.4th 1282, 1290.

As the Court noted in sustaining defendants' demurrers to the FAC, a breach of contract alone is not sufficient to state a UCL claim. See Puentes v. Wells Fargo Home Mortg., Inc. (2008) 160 Cal.App.4th 638, 645. However, the Puentes Court also recognized that if a plaintiff alleges facts showing that the breach of contract "also constitutes conduct that is 'unlawful, or unfair, or fraudulent,' " then a UCL claim may be properly stated.

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NATURE OF PROCEEDINGS:

With respect to the TAC, the Court agrees with Plaintiff that it has alleged additional facts showing that the breach of the title sponsor agreement may also serve as a predicate act for a UCL claim. In the TAC, Plaintiff alleges that it bargained for a contract whereby the surfing event formerly known just as the "Mavericks Invitational" would henceforth be called the "Body Glove Mavericks Invitational." This renaming would prominently display Plaintiff as the lead sponsor for the event. However, after only one running of the event under this name, MII (at the behest of Cartel and Guess) unilaterally renamed the event "Titans of Mavericks" without any mention of Plaintiff. Furthermore, in the 2016 version of the event, Plaintiff was not provided any of the perks a title sponsor normally would receive and which were provided for the 2014 event. This could create ambiguity for the public and other sponsors as to the sponsorship status of the event. Furthermore, by utilizing a third-party apparel manufacturer to distribute new event sportswear with the rebranded name of the event, MII is again potentially misleading the public because Plaintiff was given right to identify itself as the "Official Sportswear of the Body Glove Mavericks Invitational" in connection with the sales and marketing of both Mavericks Invitational co-branded Sportswear and Body Glove branded Sportswear. Thus, while all of the facts above constitute a breach of contract, they also demonstrate that this breach has led to false advertising of the event that may lead

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NATURE OF PROCEEDINGS:

the public and other sponsors to question the true sponsorship status of future events. This is sufficient to state a UCL claim.

The demurrer is OVERRULED.
UCL Claim Against Cartel and Guess

The "California Supreme Court has given the term 'unlawful' a straightforward and broad interpretation . . . [that] 'embraces anything that can properly be called a business practice and that at the same time is forbidden by law.' " Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1143. The California Supreme Court has also confirmed that the UCL "unlawful" prong may borrow obligations imposed solely by the common law. Yanting Zhang v. Superior Court (2013) 57 Cal.4th 364, 384. In CRST Van Expedited, Inc. v. Werner Enterprises, Inc. (9th Cir. 2007) 479 F.3d 1099, the Ninth Circuit held that a properly stated claim for intentional interference with contract is a predicate unlawful business act that will give rise to UCL liability. Id. at 1107.

Here, the Court has already found that Plaintiff adequately alleged a claim against Cartel and Guess for intentionally interfering with its contract with MII. As noted above, this interference has led to potential consumer and sponsor confusion over the sponsorship status of the surfing event and the source of its event-branded sportswear. Given that a

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sufficient claim for intentional interference with contract has been stated, the court "need go no further to conclude that . . . [Plaintiff has] adequately alleged a violation by [Cartel and Guess] of the UCL by alleging [Cartel and Guess] engaged in an 'unlawful' business practice"

The demurrer is OVERRULED.

Answers to be filed in 14 days (November 10, 2016).

Case Management Conference is continued to January 23, 2017 at 8:30 a.m.

Notice is waived.

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