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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INFINITY MICRO COMPUTER,)	Case No. CV 15-04777 DDP (SSx)
INC., a corporation; MICHAEL)	
BANAFSHEHA, an individual;)	
and MATTHEW BANAFSHEHA, an)	
individual,)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S MOTION
)	FOR SUMMARY JUDGMENT AND GRANTING
v.)	DEFENDANTS' CROSS-MOTION FOR
)	SUMMARY JUDGMENT
CONTINENTAL CASUALTY)	
COMPANY, an Illinois)	
corporation; and)	
TRANSPORTATION INSURANCE)	
COMPANY, an Illinois)	[Dkts 19, 20]
corporation,)	
)	
Defendants.)	
)	
)	
_____)	

Presently before the court are cross motions for summary judgment. Having considered the submissions of the parties and heard oral argument, the court denies Plaintiffs' Motion, grants Defendants' Motion, and adopts the following Order.

I. Background

Plaintiff Infinity Micro Computer, Inc. ("Infinity") acted as a broker, or middle-man, of computer equipment purchased from

1 third-party suppliers who would then ship the equipment directly
2 to Plaintiff's customers. (Declaration of Michael Banafsheha
3 ("Michael") ¶4; Declaration of Matthew Banafsheha ("Matthew") ¶4.)
4 Plaintiff operated its business primarily through advertising on
5 its website.¹ (Matthew Dec. ¶4.)

6 Plaintiff purchased a comprehensive business liability
7 insurance policy ("the Policy") from Defendants for the period of
8 March 31, 2009 until March 31, 2013. (Def. Exhibits A-D.) The
9 Policy covered damages for "personal and advertising injury."
10 (Declaration of E. Craig Sowder, Exs A-D to Sowder Dec., at 10 &
11 11.) The Policy defined personal and advertising injury as "an
12 injury . . . arising out of one or more of the following offenses:
13 . . . 14(f) the use of another's advertising idea in your
14 'advertisement'; or 14(g) infringing upon another's copyright,
15 trade dress or slogan in your 'advertisement'." (Id. at 23-25,
16 respectively.) The Policy excluded injuries "(3) [a]rising out of
17 oral or written publication of material whose first publication
18 took place before the beginning of the policy period; . . . (7)
19 [a]rising out of the failure of goods, product or services to
20 conform with any statement of quality or performance made in your
21 advertisement; . . . and (13) [a]rising out of the infringement of
22 copyright, patent, trademark, trade secret or other intellectual
23 property rights. However, this exclusion does not apply to
24 infringement in your advertisement of copyright, trade dress or
25 slogan." (Id. at 16-18, respectively.)

26

27 ¹ Plaintiffs' papers appear to use the term "Plaintiff" to
28 apply to Infinity and the Individual Defendants, collectively.
This Order does the same, unless otherwise specified.

1 On March 19, 2013, Plaintiff received an email from nonparty
2 Cisco Systems stating that Plaintiff was wrongfully "displaying
3 [Cisco's] trademarked Premiere Certified Partner logo" on
4 Plaintiff's website. (Michael Dec. ¶6; Matthew Dec. ¶5; Pl.
5 Exhibit A. at A002-03.) Cisco informed Plaintiff that "only
6 authorized Cisco resellers are allowed to advertise themselves as
7 Cisco partners and to use any of [Cisco's] trademarked logos" and
8 Plaintiff's use of Cisco's logo was "a violation of [Cisco's]
9 trademark rights". (Pl. Exhibit A. at A003.) Cisco further
10 informed Plaintiff that because Plaintiff was not a "Cisco partner,
11 use of Cisco Reseller Certified logos and advertising by
12 [Plaintiff] [is] considered by [Cisco] to be false and misleading".
13 (Id.) Cisco requested Plaintiff "cease and desist the use of any
14 and all Cisco logos on [Plaintiff's] website and in all
15 [Plaintiff's] sales and marketing materials and ceas[e] from
16 advertising [Plaintiff's] company as a Cisco partner". (Michael
17 Dec. ¶6; Matthew Dec. ¶5; Pl. Exhibit A. at A002-03.)

18 On June 7, 2013, Cisco informed Plaintiff that Cisco had
19 "determined that a significant number of Cisco products purchased
20 and sold by [Plaintiff] were undoubtedly counterfeit[,]" and
21 pointed out that the products provided by one of Plaintiff's
22 suppliers were failing at an alarmingly high rate of 40%.² (Pl.
23 Exhibit B. at B006.) Cisco also informed Plaintiff that Cisco
24 believed that "[t]he fact that [Plaintiff] has continued to buy
25 suspiciously low priced 'Cisco' products" from Plaintiff's
26 suppliers "suggests that [Plaintiff] knew that the 'Cisco' products

27
28 ² The supplier, Mark Morgan, was indicted for selling counterfeit parts to the federal government on May 22, 2013.

1 it was selling were counterfeit". (Exhibit B. at B009.) Cisco
2 demanded over \$1.5 million from Plaintiff for selling counterfeit
3 products. (Michael Dec. ¶8; Pl. Exhibit B. at B009.)

4 Plaintiff tendered the June 7, 2013 demand to Defendant on
5 July 11, 2013. (Michael Dec. ¶8; Pl. Exhibit B.) On, August 2,
6 2013, Plaintiff responded to Cisco and denied Cisco's assertion
7 that Plaintiff was selling counterfeit products. (Id.) On August
8 20, 2013, Defendants denied coverage. (Michael Dec. ¶13 & Pl.
9 Exhibit E.)

10 Cisco filed a complaint against Plaintiff on April 17, 2014,
11 and Plaintiff tendered Cisco's complaint to Defendants on April 21,
12 2014. (Michael Dec. ¶14; Pl. Exhibit G.) Defendants again denied
13 Plaintiff's claim, claiming that several exclusions applied.
14 (Michael Dec. ¶15; Pl. Exhibit H.)

15 On September 9, 2014, Plaintiff asked Defendants for
16 reconsideration of their denial. (Michael Dec. ¶19 and Exhibit J.)
17 On September 15, 2014, Defendants reiterated their denial, stating
18 that the same exclusions asserted in May 2014 still applied and
19 that the claim brought by Cisco did not allege a covered
20 "advertising injury." (Id.)

21 On October 7, 2014, Cisco amended its complaint. (Pl.
22 Exhibits K.) Cisco's amended complaint included eight causes of
23 action including: (1) trademark infringement, 15 U.S.C. §1141(1)(a);
24 (2) trademark counterfeiting, 15 U.S.C. §1141(1)(b); (3) false
25 advertising, 15 U.S.C. §1125(a); (4) trademark dilution, 15 U.S.C.
26 §1125(c); (5) California Statutory Dilution, Cal. Bus. & Prof. Code
27 § 14245 & 14247; (6) California Statutory unfair competition, Cal.
28 Bus. & Prof. Code §17200 et seq.; (7) California common law

1 trademark infringement; and (8) California false advertising, Cal.
2 Bus. & Prof. Code §17500 et seq. (Pl. Exhibit K.) In the amended
3 complaint, Cisco alleged that since February 2006, Plaintiff had
4 "sold and trafficked counterfeit Cisco products," and did so
5 despite numerous demands from Cisco and several government seizures
6 of counterfeit goods. (Pl. Exhibit K at K144 ¶23.)

7 On October 10, 2014, Plaintiff's coverage counsel submitted a
8 letter to Defendant explaining why Defendants' initial denial of
9 coverage was in error and why, in light of new allegations by Cisco
10 in the first amended complaint, Defendant had a duty to defend
11 Plaintiff. (Michael Dec. ¶21 & Pl. Exhibit L.) On October 14,
12 2014, Defendant replied to Plaintiff reiterating its refusal to
13 defend. (Michael Dec. ¶22 & Pl. Exhibit M.)

14 Plaintiff now moves for partial summary judgment, seeking a
15 finding that Defendants had a duty to defend Plaintiff in the Cisco
16 suit. (Pl. Mot. for Partial Summary Judgment at 2:7-13.)
17 Defendants' have filed a cross-motion for summary judgment seeking
18 the opposite determination. (Def. Mot. for Summary Judgment at
19 2:21-24.)

20 **II. Legal Standard**

21 Summary judgment is appropriate where the pleadings,
22 depositions, answers to interrogatories, and admissions on file,
23 together with the affidavits, if any, show "that there is no
24 genuine dispute as to any material fact and the movant is entitled
25 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
26 seeking summary judgment bears the initial burden of informing the
27 court of the basis for its motion and of identifying those portions
28 of the pleadings and discovery responses that demonstrate the

1 absence of a genuine issue of material fact. See Celotex Corp. v.
2 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
3 the evidence must be drawn in favor of the nonmoving party. See
4 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the
5 moving party does not bear the burden of proof at trial, it is
6 entitled to summary judgment if it can demonstrate that "there is
7 an absence of evidence to support the nonmoving party's case."
8 Celotex, 477 U.S. at 323.

9 Once the moving party meets its burden, the burden shifts to
10 the nonmoving party opposing the motion, who must "set forth
11 specific facts showing that there is a genuine issue for trial."
12 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
13 party "fails to make a showing sufficient to establish the
14 existence of an element essential to that party's case, and on
15 which that party will bear the burden of proof at trial." Celotex,
16 477 U.S. at 322. A genuine issue exists if "the evidence is such
17 that a reasonable jury could return a verdict for the nonmoving
18 party," and material facts are those "that might affect the outcome
19 of the suit under the governing law." Anderson, 477 U.S. at 248.
20 There is no genuine issue of fact "[w]here the record taken as a
21 whole could not lead a rational trier of fact to find for the
22 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio
23 Corp., 475 U.S. 574, 587 (1986).

24 It is not the court's task "to scour the record in search of a
25 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278
26 (9th Cir.1996). Counsel has an obligation to lay out their support
27 clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031
28 (9th Cir.2001). The court "need not examine the entire file for

1 evidence establishing a genuine issue of fact, where the evidence
2 is not set forth in the opposition papers with adequate references
3 so that it could conveniently be found." Id.

4 **III. Discussion**

5 In an action seeking declaratory relief regarding a duty to
6 defend, "the insured must prove the existence of a potential for
7 coverage, while the insurer must establish the absence of any such
8 potential. In other words, the insured need only show that the
9 underlying claim may fall within policy coverage; the insurer must
10 prove it cannot." Montrose Chemical Corp. V. Superior Court, 6
11 Cal. 4th 287, 300 (1993). "The duty to defend is determined by
12 reference to the policy, the complaint, and all facts known to the
13 insurer from any source." Id.; Gray v. Zurich Ins. Co., 65 Cal.
14 2d 263, 276 (1966). The question of coverage is judged, "not . . .
15 on the basis of hindsight but, rather, from all of the information
16 available to the insurer at the time of the tender of the defense."
17 B & E Convalescent Ctr. v. State Comp. Ins. Fund, 8 Cal. App. 4th
18 78, 92 (1992). "However, where the information available at the
19 time of tender shows no coverage, but information available later
20 shows otherwise, a duty to defend may then arise." American States
21 Ins. Co., 180 Cal. App. 4th at 26. The duty to defend applies even
22 to claims that are "groundless, false, or fraudulent . . . [and] is
23 separate from and broader than the insurer's duty to indemnify."
24 Waller, 11 Cal. App. 4th at 19. "[T]he duty to defend a suit which
25 raises a possibility of liability, but is eventually shown to be
26 groundless, does not equate with a duty to defend a suit which
27 raises no potential liability." B & E Convalescent Ctr., 8 Cal.

28

1 App. 4th at 100 (citing Nichols v. Great American Ins. Companies,
2 169 Cal. App. 3d 766 (1985)).

3 A. Advertising Idea

4 The Policy defined covered "personal and advertising injury"
5 to include injuries arising out of "the use of another's
6 advertising idea in your 'advertisement.'" One of the allegations
7 of Cisco's First Amended Complaint against Plaintiff was that
8 Plaintiff "displayed on their website [Cisco's] Cisco Premiere
9 Certified Partner Logo." (Pl. Ex. K at 148.) Cisco alleged that
10 it informed Plaintiff that use of the logo was a trademark
11 violation and that Cisco considered "use of Cisco Reseller
12 Certified logos and advertising as a Cisco partner . . . to be
13 false and misleading." (Id.) Plaintiff argues that these
14 allegations constitute an allegation of injury arising from use of
15 Cisco's advertising idea, therefore triggering coverage under the
16 Policy.

17 The Policy does not define the term "advertising idea."
18 Ambiguous coverage language in an insurance policy must be
19 interpreted broadly in favor of coverage. Silicon Valley Bank v.
20 New Hampshire Ins. Co., 203 F. Supp. 2d 1152, 1157 (C.D. Cal.
21 2002). Contract language must be construed, however, in the
22 context of the contract as a whole, with the goal of protecting
23 "the objectively reasonable expectations of the insured." Bank of
24 the West v. Superior Court, 2 Cal. 4th 1254, 1265 (1992). Here, as
25 discussed in more detail below with respect to coverage exclusions,
26 Plaintiff could not have reasonably expected trademark infringement
27 to fall within the definition of "advertising idea." Plaintiff
28 argues that Cisco's use of its Certified Premier Partner logo, and

1 the accompanying implementation of training classes and other
2 prerequisites to obtaining premier partner status, constituted a
3 method used to market its products, and therefore qualifies as an
4 "advertising idea." Plaintiff, however, was not alleged to have
5 copied Cisco's training or certification program, but simply to
6 have copied the logo. At some level, everything a business does to
7 market a product is an "idea." To read the term "advertising idea"
8 so broadly as to cover any act taken in the course of marketing,
9 including the use of a logo, would render the term almost
10 meaningless. It remains unclear to the court how Plaintiff's
11 decision to say that it was an authorized Cisco reseller, when in
12 fact it was not, is a "marketing idea" and not simply a
13 misrepresentation.

14 Plaintiff argues that the court in Lebas Fashion Imports of
15 USA, Inc. v. ITT Hartford Ins. Group, 50 Cal. App. 4th 548 (1996)
16 supports its broad reading of "advertising injury." Indeed, the
17 Lebas court did hold that an allegation of trademark violation
18 triggered coverage under an "advertising injury" insurance policy.
19 Lebas, 50 Cal. App. 4th at 562. Regardless whether this court
20 would have so held, the terms at issue in Lebas, as well as the
21 overall context of the contract, differ from those here. First,
22 while the contract here referred to "use" of an advertising idea,
23 the Lebas court construed the term "misappropriation of an
24 advertising idea," alongside and along with the term
25 "misappropriation of a style of doing business." Id. at 558, 561
26 (emphasis added). The inclusion of the word "misappropriation,"
27 not present here, was central to the Lebas court's analysis. Id.
28 at 562-565. For similar reasons, Sentex Systems Inc. v. Hartford

1 Acc. & Indem. Co., 93 F.3d 578 (9th Cir. 1996) is of little help to
2 Plaintiff. As in Lebas, the Sentex court analyzed the term
3 "misappropriation of advertising ideas or style of doing business."
4 Sentex, 93 F.3d at 580. Further, the complaint at issue in Sentex
5 involved conduct much broader than that at issue here, including
6 the misappropriation of trade secrets such as "customer lists,
7 methods of bidding jobs, methods and procedures for billing,
8 marketing techniques, and other inside and confidential
9 information." Id.

10 Furthermore, and more centrally, the policy at issue in Lebas
11 involved no coverage exclusions. Lebas, 50 Cal. App. 4th at 554.
12 Here, in contrast, Plaintiff could not reasonably have interpreted
13 "advertising injury" to cover its appropriation of Cisco's logo
14 because the Policy expressly excluded injuries "[a]rising out of
15 the infringement of . . . trademark . . . or other intellectual
16 property rights."³ Plaintiff argues that the intellectual property
17 exclusion cannot apply "for the simple reason that the 'use of an
18 advertising idea' is not the same thing as an 'infringement of an
19 intellectual property right.'" (Plaintiff's Reply at 19:2-4.) The
20 logic of this seemingly circular argument is unclear, and
21 presupposes that Plaintiff's alleged misappropriation of Cisco's
22 logo was an advertising idea inherently distinct from infringement
23 of an intellectual property right. As discussed above, Plaintiff's
24 misrepresentation, unaccompanied by any other aspect of Cisco's
25 training, certification, or marketing plan cannot be characterized
26 as a style of doing business. Under California law, "arising out

27
28 ³ That exclusion did not apply to copyright, trade dress or slogan infringement claims.

1 of" language in an insurance contract "broadly links a factual
2 situation with the event creating liability, and connotes only a
3 minimal causal connection or incidental relationship." Acceptance
4 Ins. Co. v. Syufy Enters., 69 Cal. App. 4th 321, 328 (1999); See
5 also Aloha Pacific, Inc. v. Cal. Ins. Guar. Ass'n., 79 Cal. App.
6 4th 297, 318-19 (2000). Cisco's allegations that Plaintiff
7 improperly displayed Cisco's "Cisco Premiere Certified Partner"
8 logo, and that Cisco considered such use a trademark violation,
9 bear more than the minimal causal connection required to "arise[]
10 out of "the infringement of . . . trademark . . . or other
11 intellectual property rights."

12 B. Slogan Infringement

13 The Policy's definition of covered "personal and advertising
14 injury" included injuries arising out of "infringing upon another's
15 copyright, trade dress or slogan in your 'advertisement'." The
16 intellectual property exclusion, discussed above, did not apply to
17 copyright, trade dress, or slogan infringement claims. Plaintiff
18 argues that even if its use of the Cisco's "Cisco Premiere
19 Certified Partner" logo does not trigger "advertising idea"
20 coverage, Plaintiff's use of the words "Cisco Premier Partner"
21 triggers coverage under the slogan provision of the Policy.
22 (Plaintiffs Reply at 10; Opp. at 15.)

23 Defendants do not dispute that the Policy covered slogans.
24 The question for the court is whether the phrase "Cisco Premier
25 Partner" qualifies as a slogan. The California Supreme Court has
26 held that a slogan is "a brief attention-getting phrase used in
27 advertising or promotion." Palmer v. Truck Ins. Exchange, 21
28 Cal.4th 1109, 1120 (1999); See also Street Surfing, LLC v. Great

1 Am. E & S Ins. Co., 776 F.3d 603, 608 (9th Cir. 2014). It is
2 possible that "the name of a business, product, or service, by
3 itself," might qualify as a slogan. Palmer, 21 Cal. 4th at 1120.

4 There appears to be no dispute that Cisco never alleged slogan
5 infringement or identified any "slogan" in its communications with
6 or demand letters to Plaintiff. That fact alone is not
7 dispositive. See Hudson Ins. Co. v. Colony Ins. Co., 624 F.3d
8 1264, 1268-69 (9th Cir. 2010) (Holding that, regarding the alleged
9 slogan "Steel Curtain," "it does not matter that the NFL complaint
10 never referred to "steel curtain" as a slogan and never listed
11 slogan infringement as a cause of action."). In Street Surfing,
12 however, the Ninth Circuit held that, absent any evidence that the
13 third party used an alleged slogan as such, there could be no
14 inference that the third party's trademark infringement and unfair
15 competition claim would implicate slogan infringement. Street
16 Surfing, 776 F.3d at 608-09. Thus, the court concluded, the
17 insurer's did not have a duty to defend under a slogan infringement
18 coverage provision. Id. at 609 (distinguishing Hudson).

19 Plaintiff attempts to distinguish Street Surfing by arguing
20 that the allegations in Cisco's First Amended Complaint suggested
21 that Cisco used "Certified Premier Partner" as a slogan. Plaintiff
22 cites to paragraphs 41 and 61 specifically. Paragraph 41 alleges:

23 In March 2013, a Cisco brand protection employee
24 discovered that DEFENDANTS were displaying on the website
25 Plaintiffs' Cisco Premiere Certified Partner logo. On
26 March 19, 2013, Plaintiffs emailed DEFENDANTS requesting
27 that they remove Plaintiffs' Cisco Premiere Certified
28 Partner logo. Plaintiffs informed DEFENDANTS that
continued use of Plaintiffs' logo would be considered a
violation of Plaintiffs' trademark rights and that use of
Cisco Reseller Certified logos and advertising as a Cisco
partner are considered by Plaintiffs to be false and

1 misleading. That same day, DEFENDANTS responded and
2 agreed to remove the logo from their website.

3 (Plaintiff Ex. K at 148). Paragraph 61 alleges:

4 DEFENDANTS, in commercial advertising and promotion,
5 misrepresented the nature, characteristics, qualities, or
6 geographic origin of the CISCO products it sold, by
7 falsely advertising that the counterfeit goods were
8 genuine CISCO products and that they were an authorized
9 Cisco partner. The false advertising concerned material
10 information that was likely to influence a consumer's
11 purchasing decision.

12 (Id. at 152.) Contrary to Plaintiff's characterization, these
13 allegations do not indicate that Cisco itself used "Certified
14 Premier Partner" as a slogan. Indeed, that particular phrase does
15 not appear in the allegations cited.⁴ Thus, as in Street Surfing,
16 Defendants review of the allegations could not have ascertained
17 that Cisco's claim might give rise to an infringement claim
18 regarding a "Certified Premier Partner" slogan.

19 C. Trade Dress

20 As stated above, the Policy's definition of covered "personal
21 and advertising injury" included injuries arising out of trade
22 dress. Plaintiff makes a final argument that Cisco's "sales
23 technique of using a blue circular logo to endorse its 'premier
24 partners'" constitutes Cisco's trade dress, and that Plaintiff's
25 use of that logo therefore triggered coverage. (Plaintiffs' Reply
26 at 13.)

27 "[T]rade dress involves the total image of a product and may
28 include features such as size, shape, color, color combinations,
29 texture, or graphics. Vision Sports, Inc. v. Melville Corp., 888

30 ⁴ It is also unclear from the record whether Cisco itself used
31 the phrase "Cisco Premiere Certified Partner," or whether the
32 authorized partners themselves used that phrase.

1 F.2d 609, 613 (9th Cir. 1989) (internal quotation marks omitted).
2 "Trade dress refers to the overall appearance of the product
3 design, rather than its mechanics or a specific logo." Glob. Mfg.
4 Grp., LLC v. Gadget Universe.Com, 417 F. Supp. 2d 1161, 1164 (S.D.
5 Cal. 2006) (discussing Wal Mart Stores, Inc. v. Samara Bros., 529
6 U.S. 205, 209-10 (2000)). The "total image of a product" may also
7 include "particular sales techniques." Two Pesos, Inc. v. Taco
8 Cabana, Inc., 505 U.S. 763, 765 (1992).

9 Although the overall image of a product may include a
10 particular marketing technique, Plaintiff does not cite, nor has
11 the court discovered, any authority for the proposition that sales
12 technique alone can define a product's overall image. Nor is the
13 court aware of any instance in which use of a logo, by itself, has
14 been held to constitute a "sales technique" or trade dress. Cf.
15 Vision Sports, 888 F.2d at 613 (Describing trade dress claim
16 "focus[ing] upon the look and style of the clothing (including the
17 fabric pattern), along with the color scheme and graphic display
18 embodied in the . . . logo) (Emphasis added); See also
19 Schwinn Bicycle Co. v. Ross Bicycles, Inc., 870 F.2d 1176, 1182
20 (7th Cir. 1989) "A product's trade dress is the overall image used
21 to present it to its purchasers A *trademark* on the other
22 hand is thought of as something more specific, such as a logo."
23 (Internal citations and alterations omitted) (Emphasis original).

24 Like Plaintiff's propounded interpretation of "advertising
25 idea," a definition of "sales technique" broad enough to encompass
26 mere use of a logo would necessarily subsume virtually every act of
27 advertising a good or service. Compare, e.g., HWE, Inc. v. JB
28 Research, Inc., 993 F.2d 694, 695 (9th Cir. 1993) (Describing

1 parties' marketing technique of using "a substantial percentage of
2 advertising and promotional material illustrating . . . unique
3 image advertising illustrating female models wearing workout
4 clothing lying upon [a] pad and holding [a] controller in her
5 hand.").

6 Absent any allusion in Cisco's First Amended Complaint to
7 trade dress, references to Cisco's "blue circular logo" alone did
8 not suggest that Plaintiff may have been held liable for infringing
9 upon Cisco's "sales technique" or trade dress. Accordingly, the
10 Policy's trade dress coverage provision did not trigger Defendants'
11 duty to defend.

12 **IV. Conclusion**

13 For the reasons stated above, Plaintiff's Motion for Partial
14 Summary Judgment is DENIED and Defendants' Motion for Summary
15 Judgment is GRANTED.⁵

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18 IT IS SO ORDERED.

19
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21 Dated: September 29, 2016



22 DEAN D. PREGERSON
23 United States District Judge
24
25

26 _____
27 ⁵ Having concluded that Plaintiff has not proved the existence
28 of a potential for coverage, the court does not address Defendants'
additional arguments regarding the prior publication or failure to
conform exclusions.