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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GLOBAL VENTU HOLDING B.V.,  
12 Plaintiff,  
13 v.  
14 ZEETOGROUP, LLC, SAMPLES.COM,  
15 LLC, AND TIBRIO, LLC,  
16 Defendants.

Case No.: 19cv1018 DMS (DEB)

**ORDER DENYING GLOBAL  
VENTU'S MOTION FOR  
SUMMARY JUDGMENT**

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18 ZEETOGROUP, LLC, SAMPLES.COM,  
19 LLC, AND TIBRIO, LLC,  
20 Cross Claimants,  
21 v.  
22 GLOBAL VENTU HOLDING B.V.,  
23 ALEX ANDEBEEK, an individual, and  
24 ROES 1 through 50, inclusive,  
Cross Defendants.

25 This case comes before the Court on Global Ventu B.V.'s motion for summary  
26 judgment or partial summary judgment on Tibrio's Second Amended Cross-Complaint  
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1 (“SACC”). Tibrio filed an opposition to the motion, and Global Ventu filed a reply.<sup>1</sup> After  
2 reviewing the parties’ briefs and the record on file in the case, the motion is denied.

3 **I.**

4 **BACKGROUND**

5 The factual background of this case is set out in the Court’s previous orders. As  
6 relevant to the present motion, the parties entered into a business relationship in June 2016  
7 for advertising and marketing services. The relationship was governed by two contracts, a  
8 Publisher Services Agreement (“PSA”), (Evid. in Supp. of Mot., Ex. 1), and a Revenue  
9 Sharing Agreement (“RSA”). (Evid. in Supp. of Mot., Ex. 2.)

10 Pursuant to these Agreements, Tibrio, fka Samples.com, was to provide  
11 “Advertising Material” to Global Ventu, and Global Ventu was to monetize that Material  
12 through Tibrio’s “Get It Free” Facebook page. (SACC ¶¶21-26.) Paragraph 1 of the PSA,  
13 which is entitled “Services,” states Global Ventu “will only distribute Advertising Material  
14 internally and shall not distribute or re-sell Advertising Material to any external third party  
15 without Advertiser’s written consent.” (Evid. in Supp. of Mot., Ex. 1 ¶1.) The PSA also  
16 states Global Ventu “may not copy, reproduce or create derivative works of the Advertising  
17 Material for any purpose outside of this Agreement without Advertiser’s prior consent.”  
18 (*Id.* ¶2.)

19 Pursuant to the RSA, Tibrio gave Global Ventu access to its “Get It Free” Facebook  
20 page “solely for the purpose of providing the services detailed herein.” (Evid. in Supp. of  
21 Mot., Ex. 2 ¶1.) Those services included taking responsibility “for general oversight and  
22 management of the Facebook Account, which includes, but is not limited to: (1) developing  
23 and optimizing existing campaigns; (2) managing budgets for campaigns; and (3) planning,  
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27 <sup>1</sup> After the motion was submitted, Tibrio filed an ex parte motion for leave to file a surreply,  
28 which Global Ventu opposes. The Court finds the surreply unnecessary, and therefore  
denies Tibrio’s ex parte motion.

1 buying, and executing campaigns.” (*Id.*) Paragraph 2 of the RSA, entitled “Ownership,”  
2 states:

3 Neither this Agreement nor its performance transfers any of [Tibrio’s]  
4 proprietary property, including: designs, content, advertisements,  
5 documentation, copy, images, and any related intellectual property (the  
6 “Intellectual Property”) right from either party to the other party. The  
7 Intellectual Property shall at all times be and remain the sole property of the  
8 original party. Furthermore, the Facebook account shall also remain the sole  
9 property of [Tibrio], and [Tibrio] may reject any of Global Ventu’s postings  
10 or actions at any time and for any reason. Should either [Tibrio] or Global  
11 Ventu create any advertisements, creatives, copy, or any other related  
12 intellectual property, the new creations will remain the property of the party  
13 which created such intellectual property.

14 (*Id.* ¶2.)

15 Over the following two years, the parties enjoyed a profitable business relationship.  
16 However, on November 12, 2018, Tibrio “informed Global Ventu that it was switching its  
17 backend technology to a software called ZAN, which had been developed by  
18 ZeetoGroup.”<sup>2</sup> (Decl. of Alex Andebeck in Supp. of Mot. (“Andebeck Decl.”) ¶6.<sup>3</sup>) The  
19 evidence reflects Global Ventu was unhappy with ZAN’s performance, and requested a  
20 modification to the parties’ contracts, which Tibrio refused. (*See* Decl. of Jacob Gillick in  
21 Supp. of Opp’n to Mot., Ex. 15; Andebeck Decl. ¶8.) Tibrio contends Global Ventu then  
22 terminated the parties’ relationship. (Decl. of Stephan Goss in Supp. of Opp’n to Mot.  
23 (“Goss Decl.”) ¶2.) Global Ventu disputes that assertion, and contends Tibrio breached  
24 the contracts by revoking Global Ventu’s access to Tibrio’s “Get It Free” Facebook account  
25 without providing the requisite notice of termination under the contracts. (Andebeck Decl.  
26 ¶9.) “As a result of this improper lock-out, Global Ventu was unable to access and remove

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27 <sup>2</sup> ZeetoGroup is the parent company of Tibrio. (SACC ¶34.)

28 <sup>3</sup> Mr. Andebeck is the owner and principal officer of Global Ventu. Tibrio named him as  
a Cross-Defendant in its original Cross-Complaint, but he has since been dismissed.

1 all of the ad content, advertising campaigns, and proprietary tracking information it had  
2 spent years and significant sums of money developing.” (*Id.*)

3 As a result of these events, Global Ventu filed a Complaint against Samples, Tibrio  
4 and ZeetoGroup alleging claims for breach of the RSA, breach of the PSA, violation of  
5 California’s Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.* (“CUTSA”),  
6 violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et. seq.* (“DTSA”), and unfair  
7 competition under California Business and Professions Code § 17200 *et seq.* (“UCL”).  
8 While that Complaint was pending, a Tibrio employee did some testing for Tibrio’s “Get  
9 It Free” Facebook account. (Decl. of Macey Farnsworth in Supp of Opp’n to Mot.  
10 (“Farnsworth Decl.”) ¶2.) During that testing, “[i]nstead of navigating to the page directly  
11 like usual, [Ms. Farnsworth] typed “Get it Free” into Facebook’s search bar.” (*Id.*) She  
12 states: “Almost immediately a page populated that I did not recognize called ‘Your Free  
13 Samples.’” (*Id.* ¶3.) Global Ventu admits it created the “YourFreeSamples” Facebook  
14 page, but asserts that it did so “as a placeholder for advertising content.” (Andebeck Decl.  
15 ¶11.) Tibrio claims the “YourFreeSamples” page contains content from its “Get It Free”  
16 Facebook page, and that some of the copy on the two pages is exactly the same. (Goss  
17 Decl. ¶4.)

18 As a result of its discovery of the “YourFreeSamples” page, Tibrio filed a Cross-  
19 Complaint against Global Ventu and Alex Andebeck alleging claims for trade secret  
20 misappropriation under the CUTSA and DTSA, intentional interference with prospective  
21 economic relations, unfair competition under the UCL, and breach of the RSA and the  
22 PSA. Those cross-claims are the focus of the present motion.

## 23 II.

## 24 DISCUSSION

25 This is the eighth motion filed by the parties in this case, and the sixth motion filed  
26 by Global Ventu and Mr. Andebeck. Although the parties spent a considerable amount of  
27 time litigating the pleadings, their briefing on the present motion strays from those  
28 controlling documents, and suggests there may be some misunderstandings about Tibrio’s

1 theories of liability in this case and the burdens associated with a summary judgment  
2 motion. In considering the present motion, the Court relies on the parties' pleadings, and  
3 analyzes the claims and evidence in the context of those documents and in accordance with  
4 the legal standard set out below.

### 5 **A. Legal Standard**

6 Summary judgment is appropriate if there is no genuine issue as to any material fact,  
7 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The  
8 moving party has the initial burden of demonstrating that summary judgment is proper.  
9 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The moving party must identify  
10 the pleadings, depositions, affidavits, or other evidence that it "believes demonstrates the  
11 absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323  
12 (1986). "A material issue of fact is one that affects the outcome of the litigation and  
13 requires a trial to resolve the parties' differing versions of the truth." *S.E.C. v. Seaboard*  
14 *Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

15 The burden then shifts to the opposing party to show that summary judgment is not  
16 appropriate. *Celotex*, 477 U.S. at 324. The opposing party's evidence is to be believed,  
17 and all justifiable inferences are to be drawn in its favor. *Anderson v. Liberty Lobby, Inc.*,  
18 477 U.S. 242, 255 (1986). However, to avoid summary judgment, the opposing party  
19 cannot rest solely on conclusory allegations. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th  
20 Cir. 1986). Instead, it must designate specific facts showing there is a genuine issue for  
21 trial. *Id.* See also *Butler v. San Diego District Attorney's Office*, 370 F.3d 956, 958 (9th  
22 Cir. 2004) (stating if defendant produces enough evidence to require plaintiff to go beyond  
23 pleadings, plaintiff must counter by producing evidence of his own). More than a  
24 "metaphysical doubt" is required to establish a genuine issue of material fact. *Matsushita*  
25 *Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

### 26 **B. Trade Secret Misappropriation**

27 The first two claims alleged in the Second Amended Cross-Complaint are for trade  
28 secret misappropriation. "To state a claim for trade secret misappropriation under the

1 DTSA and the CUTSA, a plaintiff must allege that: ‘(1) the plaintiff owned a trade secret;  
2 (2) the defendant misappropriated the trade secret; and (3) the defendant’s actions damaged  
3 the plaintiff.’” *Alta Devices, Inc. v. LG Electronics, Inc.*, 343 F.Supp.3d 868, 877 (N.D.  
4 Cal. 2018) (quoting *Space Data Corp. v. X*, No. 16-cv-03260-BLF, 2017 WL 5013363, at  
5 \*2 (N.D. Cal. Feb. 16, 2017)).

6 Global Ventu’s request for summary judgment on these claims consists of three short  
7 paragraphs and less than ten lines, and appears to be directed to the third element of  
8 damages. (*See* Mem. of P. & A. In Supp. of Mot. at 12.) Specifically, Global Ventu  
9 appears to be arguing that Tibrio does not have any evidence of damages, therefore Global  
10 Ventu is entitled to summary judgment on these claims. However, Global Ventu has not  
11 shown there are no genuine issues of material fact on damages. On the contrary, the  
12 evidence it cites reflects there is a factual dispute on this issue. That evidence consists of  
13 Mr. Andebeck’s Declaration, wherein he states that “Global Ventu Holding BV has not  
14 made any money from the YourFreeSamples page.” (Andebeck Decl. ¶10.) But as Tibrio  
15 points out, in a preceding sentence Mr. Andebeck states, “[s]ince November 16, 2018, the  
16 YourFreeSamples page has not generated any revenue or targeted any customers.” (*Id.*)  
17 Tibrio interprets this statement to mean the “YourFreeSamples” page *did* generate revenue  
18 before November 16, 2018, (Opp’n to Mot. at 24), which Global Ventu does not dispute.  
19 Instead, Global Ventu contends any revenue generated from the page was “in relation to  
20 the business dealings with ZeetoGroup.” (Decl. of Alex Andebeck in Supp. of Reply  
21 (“Andebeck Reply Decl.”) ¶3.)

22 Construing this evidence in the light most favorable to Tibrio, which the Court must  
23 do on the present motion, Global Ventu has not shown there are no genuine issues of  
24 material fact on damages such that it is entitled to summary judgment on the trade secret  
25 claims.<sup>4</sup>

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28 <sup>4</sup> Global Ventu also relies on this damages argument in support of its request for summary  
judgment on Tibrio’s claims for intentional interference with prospective economic

1 **C. Intentional Interference with Prospective Economic Advantage**

2 The next claim is for intentional interference with prospective economic advantage.

3 In order to prove a claim for intentional interference with prospective  
4 economic advantage, a plaintiff has the burden of proving five elements: (1)  
5 an economic relationship between plaintiff and a third party, with the  
6 probability of future economic benefit to the plaintiff; (2) defendant's  
7 knowledge of the relationship; (3) an intentional act by the defendant,  
8 designed to disrupt the relationship; (4) actual disruption of the relationship;  
9 and (5) economic harm to the plaintiff proximately caused by the defendant's  
10 wrongful act, including an intentional act by the defendant that is designed to  
11 disrupt the relationship between the plaintiff and a third party.

12 *Edwards v. Arthur Andersen LLP*, 44 Cal. 4<sup>th</sup> 937, 944 (2008) (citing *Korea Supply Co. v.*  
13 *Lockheed Martin Corp.*, 29 Cal. 4<sup>th</sup> 1134, 1153-54 (2003)). In addition, Plaintiff must  
14 "plead and prove as part of its case-in-chief that the defendant's conduct was 'wrongful by  
15 some legal measure other than the fact of interference itself.'" *Korea Supply*, 29 Cal. 4<sup>th</sup>  
16 at 1153 (quoting *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4<sup>th</sup> 376, 393  
17 (1995)).

18 Here, Tibrio's claim for intentional interference rests on Global Ventu's alleged  
19 interference in Tibrio's relationship with Fluent. (SACC ¶¶57-65.)<sup>5</sup> Global Ventu argues  
20 it is entitled to summary judgment on this claim based on the competition privilege.

21 The competition privilege:

22 applies where "(a) the relation [between the competitor and third person]  
23 concerns a matter involved in the competition between the actor and the  
24 competitor, and (b) the actor does not employ improper means, and (c) the  
25 actor does not intend thereby to create or continue an illegal restraint of  
26 competition, and (d) the actor's purpose is at least in part to advance his  
27 interest in his competition with the other. ...."

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28 advantage and breach of contract. The Court's analysis above applies equally to Tibrio's  
29 other claims, and thus, the Court will not address this argument further.

<sup>5</sup> Tibrio alleges it was creating ads for Fluent during Tibrio's business relationship with  
Global Ventu. (SACC ¶28.)

1 *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Vill. Square Venture Partners*, 52 Cal.  
2 App. 4th 867, 880 (1997) (quoting *Charles C. Chapman Building Co. v. California Mart*,  
3 2 Cal. App. 3d 846, 855-856 (1969)) (internal quotation marks omitted). Global Ventu sets  
4 out these elements in its motion, but it does not analyze the facts of this case in relation to  
5 those elements. Indeed, Global Ventu fails to show what would seem to be a threshold  
6 element of the competition privilege, namely that it was in competition with Tibrio. On  
7 the contrary, Tibrio appears to allege the parties had something of a symbiotic relationship,  
8 with Tibrio creating content and Global Ventu “specializ[ing] in Facebook advertising[.]”  
9 (SACC ¶24.) Absent a showing that this threshold requirement is met, or any analysis of  
10 the other elements of the competition privilege, Global Ventu is not entitled to summary  
11 judgment on this claim.

#### 12 **D. Unfair Competition**

13 The next claim is for unfair competition under California Business and Professions  
14 Code § 17200. Specifically, Tibrio claims Global Ventu engaged in fraudulent and unfair  
15 conduct under the statute in the establishment and maintenance of its “YourFreeSamples”  
16 Facebook page.

17 To prevail on its claim under the “fraudulent” prong, Tibrio must show that  
18 “members of the public are likely to be deceived.” *Jordan v. Paul Fin., LLC*, 285 F.R.D.  
19 435, 456 (N.D. Cal. 2012). Here, Global Ventu argues Tibrio has failed to produce any  
20 evidence to support a finding of “fraudulent” conduct. However, the Court disagrees. As  
21 stated above, Tibrio submitted a declaration from Macey Farnsworth, its Senior Manager  
22 for Digital Content, who states that in late 2019, she was “doing testing for Tibrio’s ‘Get  
23 It Free’ Facebook Account.” (Farnsworth Decl. ¶2.) Ms. Farnsworth states while doing  
24 that testing, she typed “Get It Free” into Facebook’s search bar, and “[a]lmost immediately  
25 a page populated that I did not recognize called ‘Your Free Samples.’” (*Id.* ¶3.) Although  
26 this is not definitive evidence that a reasonable consumer is likely to be deceived by Global  
27 Ventu’s conduct, it raises a genuine issue of material fact, which is sufficient to withstand  
28 Global Ventu’s motion for summary judgment on the “fraudulent” prong of this claim.



1 To prevail on the “unfair” prong, Tibrio must show that Global Ventu’s conduct  
2 “violates established public policy or . . . is immoral, unethical, oppressive or unscrupulous  
3 and causes injury to consumers which outweighs its benefits.” *McKell v. Washington Mut.,*  
4 *Inc.*, 142 Cal. App. 4th 1457, 1473 (2006) (citations omitted). Global Ventu did not address  
5 that standard in its motion. Instead, it cites to a different standard for “unfair” conduct that  
6 applies when the parties are competitors. *See Sybersound Recs., Inc. v. UAV Corp.*, 517  
7 F.3d 1137, 1152 (9th Cir. 2008) (quoting *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel.*  
8 *Co.*, 20 Cal.4th 163, 83 Cal.Rptr.2d 548, 973 P.2d 527, 544 (1999)) (“Unfair acts *among*  
9 *competitors* means ‘conduct that threatens an incipient violation of an antitrust law, or  
10 violates the spirit or policy of those laws because its effects are comparable to or the same  
11 as a violation of the law, or otherwise significantly threatens or harms competition.’”)  
12 (emphasis added). Tibrio does not allege that Global Ventu is one of its competitors,  
13 however, and thus, that standard does not apply to this case. Absent a showing by Global  
14 Ventu that Tibrio has failed to meet the relevant standard, Global Ventu is not entitled to  
15 summary judgment on this claim.

#### 16 **E. Breach of Contract**

17 Tibrio’s final claim is for breach of contract. To prevail on this claim, Tibrio must  
18 meet the following elements: the existence “of a contract, plaintiff’s performance or excuse  
19 for failure to perform, defendant’s breach and damage to plaintiff resulting therefrom.”  
20 *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 1031 (2009)  
21 (quoting *McKell*, 142 Cal. App. 4th at 1489). Global Ventu does not dispute the existence  
22 of a contract here. Instead, it argues Tibrio does not have evidence of breach, and that  
23 Tibrio’s interpretation of Paragraph Five of the contract would render that Paragraph an  
24 unenforceable non-compete agreement.

25 In analyzing these arguments, the Court looks first to the contours of the claim. As  
26 pleaded, Tibrio alleges Global Ventu breached the contracts “by using the Trade Secrets  
27 on a site designed to look like Tibrio’s without Tibrio’s consent.” (SACC ¶74.) In its  
28 motion, Global Ventu does not address this allegation. Instead, it addresses another

1 allegation related to Tibrio’s first claim for trade secret misappropriation concerning  
2 Global Ventu’s relationship with Fluent. (*See* Mem. of P. & A. in Supp. of Mot. at 8-9.)  
3 Because Global Ventu does not address the allegations underlying the breach of contract  
4 claim, its first argument does not warrant summary judgment in its favor.

5       Next, Global Ventu argues that Tibrio breached the contracts first, thereby relieving  
6 Global Ventu of its obligations under the contracts. In support of this argument, Global  
7 Ventu relies on Mr. Andebeck’s Declaration and Tibrio’s Answers to Global Ventu’s  
8 Complaints. Mr. Andebeck’s Declaration, however, does not support Global Ventu’s  
9 timeline of events. On the contrary, Mr. Andebeck states the “YourFreeSamples”  
10 Facebook page was operating before November 16, 2018, (Andebeck Reply Decl. ¶3),  
11 which, if true, would defeat Global Ventu’s argument that Tibrio’s breach, which allegedly  
12 occurred on November 16, 2018, relieved Global Ventu of any obligations under the  
13 contracts. The only other evidence Global Ventu relies on to support this argument is  
14 Tibrio’s Answers to the Complaints, but those Answers are unverified, and thus, cannot be  
15 considered as evidence on the present motion. *Cf. Moran v. Selig*, 447 F.3d 748, 759 (9th  
16 Cir. 2006) (stating “the complaint in this case cannot be considered as evidence at the  
17 summary judgment stage because it is unverified.”)

18       Global Ventu’s final argument on Tibrio’s breach of contract claim is that Tibrio’s  
19 interpretation of Paragraph Five of the RSA would render that Paragraph an unenforceable  
20 non-compete agreement. According to Global Ventu, that Paragraph prohibits the parties  
21 from using “affiliates” of the other party. However, Paragraph Five of the RSA is the  
22 termination clause. (*See* Evid. in Supp. of Mot., Ex. 2 ¶5.) It has nothing to do with the  
23 use of affiliates. Indeed, the “affiliates” paragraph does not appear at all in the RSA.  
24 Rather, it is found in the PSA at Paragraph 3. (*See* Evid. in Supp. of Mot., Ex. 1 ¶3.)  
25 Regardless, the “affiliates” paragraph does not serve as the basis for Tibrio’s breach of  
26 contract claim. Instead, the claim appears to be based on other Paragraphs in the PSA and  
27 RSA, including Paragraphs 1, 2 and 9 of the PSA and Paragraphs 1, 2 and 6 of the RSA.  
28 (*See* Evid. in Supp. of Mot., Ex. 1 ¶¶1, 2, 9; Ex. 2 ¶¶1, 2, 6.) Because Global Ventu failed

1 to address the relevant provisions of the contracts, it is not entitled to summary judgment  
2 on this claim.

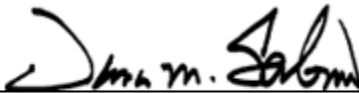
3 **III.**

4 **CONCLUSION**

5 For all of the reasons set out above, Global Ventu's motion for summary judgment  
6 is denied. Going forward, the Court encourages counsel for both sides to review Civil  
7 Local Rule 2.1, and to adhere to the standards set forth therein in any future filings with  
8 this Court.

9 **IT IS SO ORDERED.**

10 Dated: May 20, 2021

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13 Hon. Dana M. Sabraw, Chief Judge  
14 United States District Court  
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