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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AIRS AROMATICS, LLC, a Delaware limited liability company,	)	Case No. CV 11-08709 DDP (JPRx)
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT'S MOTION TO DISMISS</b>
	)	
v.	)	
	)	
MINE HAKIM, individually and doing business as BIRCH BAY AROMATICS,	)	[Dkt Nos. 12, 13]
	)	
Defendants.	)	
	)	

Presently before the court is defendant Mine Hakim ("Hakim")'s Motion to Dismiss Plaintiff's Complaint. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopt the following order.<sup>1</sup>

**I. Background**

This is the latest in a series of disputes regarding the trademarks "Angel Dreams" and "Airs" ("the trademarks"). In 1993, nonparty AIRS INTERNATIONAL, INC. ("Airs International") began using the trademarks. (Complaint ¶ 10.) As determined during the

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<sup>1</sup> Defendant's unopposed Request for Judicial Notice ("RJN") is GRANTED.

1 course of prior litigation in the District of Nevada, nonparty  
2 Stephen Marcus ("Marcus") was the owner and sole shareholder of  
3 Airs International. (RJN Ex. A at 9.) By the year 2000, Airs  
4 International was facing insolvency. (Id.) As part of a scheme to  
5 defraud creditors, Marcus caused Airs International to transfer the  
6 trademarks to his assistant, Defendant Hakim. (Id. at 16.) As a  
7 result of that fraud, in 2008 the District of Nevada in Air  
8 Fragrance Products, Inc. v. Clover Gifts, Inc. 2:05-CV-0960-RCFJ-  
9 RJJ ("Clover Gifts") enjoined Marcus, Hakim, "and any agents,  
10 representatives or anyone in concert with or in control of these  
11 parties" from claiming rights to the trademarks superior to that of  
12 any other party. (RJN Ex. A at 17.) Airs International, being  
13 defunct at the time, was not a party to the Clover Gifts suit.

14 At some point subsequent to Clover Gifts, Marcus resurrected  
15 Airs International, which then assigned its trademark rights to a  
16 new entity, Plaintiff AIRS AROMATICS, LLC ("Plaintiff" or "Airs  
17 Aromatics"). (Compl. ¶ 11.) Defendant Hakim, doing business as  
18 Birch Bay Aromatics, has been using the trademarks. (Compl. ¶¶ 12-  
19 15.) Airs Aromatics brought the instant suit, alleging unfair  
20 competition under the Lanham Act, 15 U.S.C. § 1125(a), and seeking  
21 damages and injunctive relief. Defendant now moves to dismiss  
22 Plaintiff's complaint.

## 23 **II. Legal Standard**

24 A complaint will survive a motion to dismiss when it contains  
25 "sufficient factual matter, accepted as true, to state a claim to  
26 relief that is plausible on its face." Ashcroft v. Iqbal, 129 S.  
27 Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S.  
28 544, 570 (2007)). When considering a Rule 12(b)(6) motion, a court

1 must "accept as true all allegations of material fact and must  
2 construe those facts in the light most favorable to the plaintiff."  
3 Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a  
4 complaint need not include "detailed factual allegations," it must  
5 offer "more than an unadorned, the-defendant-unlawfully-harmed-me  
6 accusation." Iqbal, 129 S. Ct. at 1949. Conclusory allegations or  
7 allegations that are no more than a statement of a legal conclusion  
8 "are not entitled to the assumption of truth." Id. at 1950. In  
9 other words, a pleading that merely offers "labels and  
10 conclusions," a "formulaic recitation of the elements," or "naked  
11 assertions" will not be sufficient to state a claim upon which  
12 relief can be granted. Id. at 1949 (citations and internal  
13 quotation marks omitted).

14 "When there are well-pleaded factual allegations, a court should  
15 assume their veracity and then determine whether they plausibly  
16 give rise to an entitlement of relief." Id. at 1950. Plaintiffs  
17 must allege "plausible grounds to infer" that their claims rise  
18 "above the speculative level." Twombly, 550 U.S. at 555-  
19 56. "Determining whether a complaint states a plausible claim for  
20 relief" is a "context-specific" task, "requiring the reviewing  
21 court to draw on its judicial experience and common sense." Iqbal,  
22 129 S. Ct. at 1950.

### 23 **III. Discussion**

24 Defendant argues that this case should be dismissed because 1)  
25 Plaintiff's claims are barred by the doctrine of res judicata as a  
26 result of the Clover Gifts order enjoining Marcus or anyone in  
27 concert with him from asserting rights to the trademarks, and 2)

28

1 Plaintiff lacks standing to assert a trademark claim. (Mot. at  
2 7,11.)

3 Plaintiff recently brought similar trademark claims against a  
4 different defendant in this very court in Airs Aromatics, LLC v.  
5 Victoria Secret Stores Brands Management, Inc., Case No. 2:11-CV-  
6 04718-R-JC ("Victoria Secret"). There, the defendant argued that  
7 Airs International had no trademark rights to the trademarks at  
8 issue here, and therefore could not have assigned any such rights  
9 to Plaintiff. (RJN Ex. C. at 32.) The court agreed, noting that  
10 Airs International was defunct through 2011 and had therefore  
11 abandoned any rights to the trademarks it may have once possessed.  
12 (Id. at 33.) Accordingly, Plaintiff is estopped from raising  
13 trademark claims against Defendant here. See Parklane Hosiery Co.,  
14 Inc. v. Shore, 439 U.S. 322, 327-328 (1979) (describing defensive  
15 collateral estoppel); Collins v. D.R. Horton, Inc., 505 F.3d 874,  
16 881 (9th Cir. 2007)(distinguishing offense and defensive estoppel).

17 **IV. Conclusion**

18 For the reasons stated above, Defendant's Motion to Dismiss  
19 Plaintiff's Complaint is GRANTED.<sup>2</sup>

20

21 IT IS SO ORDERED.

22

23 Dated: May 21, 2012

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DEAN D. PREGERSON  
United States District Judge

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27 <sup>2</sup> Defendant's Motion for Sanctions is DENIED. The court notes  
28 that Plaintiff has appealed the court's order dismissing the  
Victoria Secret case.