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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRIAN LICHTENBERG, LLC, a	)	Case No. CV 13-06837 DDP (PJWx)
California limited liability	)	
company; BRIAN LICHTENBERG,	)	
an individual,	)	
	)	
Plaintiffs,	)	
	)	<b>ORDER DENYING DEFENDANTS' MOTION</b>
v.	)	<b>TO DISMISS</b>
	)	
ALEX & CHLOE, INC., a	)	
California corporation; et	)	
al.,	)	
	)	
Defendants.	)	[Dkt. No. 68]
_____	)	

Presently before the court is Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint. Having considered the parties' submissions and heard oral argument, the court denies the motion and adopts the following order.

**I. Background<sup>1</sup>**

As described more extensively in this court's earlier orders, Plaintiff Brian Lichtenberg ("Brian") designs clothing and

<sup>1</sup> The court assumes the truth of the material factual allegations in the Second Amended Complaint solely for purposes of deciding the motions to dismiss.

1 accessories and distributes his products through Brian Lichtenberg,  
2 LLC. (Second Amended Complaint ("SAC") ¶¶ 16-17).<sup>1</sup> Brian's  
3 designs include a series of parodies of designer brands, such as  
4 "Homiès" as a play on "Hermès" and "Bucci," a parody of "Gucci."  
5 (SAC ¶ 18.) Brian's spoof or parody logos mimic the style, font,  
6 and other elements of the luxury brand designs. (Id.) Brian sells  
7 shirts, sweatshirts, pants, beanies, and hats bearing the various  
8 spoof designs. (SAC ¶¶ 16-18.) Brian alleges that his designs are  
9 very successful, and are frequently worn by celebrities and  
10 featured in the media. (SAC ¶¶ 19-22.)

11 Brian's younger brother, Defendant Christopher Walter  
12 Lichtenberg ("Chris"), is the sole shareholder or principal of  
13 Defendant Alex and Chloe, Inc. ("A&C"). (SAC ¶¶ 3-4.)  
14

15 The SAC alleges that in January 2012, Brian developed one  
16 particular parody design, "Ballin," as a play on the luxury brand  
17 "Balmain." (SAC ¶ 43.) By November 2012, Chris was working as a  
18 "part-time contractor" for Brian. (SAC ¶ 46.) Chris' duties  
19 included graphic design and promotional work related to Brian's  
20 "Ballin with My Homies" project. (Id.) In connection with those  
21 duties, Chris allegedly had access to confidential lists of Brian's  
22 customers and industry contacts. (SAC ¶ 47.)

23 The FAC alleges that Chris copied and claimed ownership of the  
24 "Ballin" design, contacted Brian's manufacturer and requested that  
25 products identical to Brian's be made under the A&C label, and used  
26

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27 <sup>1</sup> Hereinafter, this Order frequently refers to Plaintiffs  
28 Brian Lichtenberg and Brian Lichtenberg, LLC, collectively, as  
"Brian."

1 Brian's confidential customer lists to sell the A&C items. (SAC ¶¶  
2 51-56.) Chris listed his products for sale on the A&C website in  
3 late January or early February 2013, before Brian's "Ballin"  
4 products came to market. (Id.)

5 Chris repeatedly claimed to own the "Ballin" design via the  
6 internet and social media. (SAC ¶¶ 66-68.) Chris also contacted  
7 several of Brian's buyers, stated that Brian's "Ballin" products  
8 were counterfeits, and asked that retailers stop selling Brian's  
9 "Ballin" products. (SAC ¶¶ 58-60; 63-65.) Chris then made further  
10 public statements claiming that Brian had stolen not only the  
11 "Ballin" design, but other parody designs as well. (SAC ¶¶ 67-68.)  
12 At Chris's request, social media sites removed images of Brian's  
13 "Ballin" apparel posted to Brian's pages. (SAC ¶ 73.)

14  
15 Chris and A&C then expanded their offerings to include other  
16 products similar to Brian's, featuring other parody designs beyond  
17 "Ballin." (SAC ¶ 86.) Chris also appropriated photographs of  
18 celebrities wearing Brian's products, then claimed on the A&C  
19 website and elsewhere that those celebrities endorsed A&C. (SAC ¶¶  
20 80-82, 84-85.)

21 Plaintiffs' SAC alleges nine causes of action against  
22 Defendants, including trade dress infringement, unfair competition  
23 and false designation of origin, and trademark dilution under  
24 Section 43 of the Lanham Act, 15 U.S.C. § 1125, as well as state  
25 law causes of action including unfair business practices in  
26 violation of California Business & Professions Code Section 17200.  
27 Defendants now move to dismiss the SAC, but address only the three  
28

1 Lanham Act causes of action and one state law cause of action for  
2 unfair business practices.

3 **II. Legal Standard**  
4

5 A complaint will survive a motion to dismiss when it contains  
6 "sufficient factual matter, accepted as true, to state a claim to  
7 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
8 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
9 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
10 "accept as true all allegations of material fact and must construe  
11 those facts in the light most favorable to the plaintiff." Resnick  
12 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
13 need not include "detailed factual allegations," it must offer  
14 "more than an unadorned, the-defendant-unlawfully-harmed-me  
15 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
16 allegations that are no more than a statement of a legal conclusion  
17 "are not entitled to the assumption of truth." Id. at 679. In  
18 other words, a pleading that merely offers "labels and  
19 conclusions," a "formulaic recitation of the elements," or "naked  
20 assertions" will not be sufficient to state a claim upon which  
21 relief can be granted. Id. at 678 (citations and internal  
22 quotation marks omitted).

23 "When there are well-pleaded factual allegations, a court should  
24 assume their veracity and then determine whether they plausibly  
25 give rise to an entitlement of relief." Id. at 679. Plaintiffs must  
26 allege "plausible grounds to infer" that their claims rise "above  
27 the speculative level." Twombly, 550 U.S. at 555. "Determining  
28

1 whether a complaint states a plausible claim for relief" is a  
2 "context-specific task that requires the reviewing court to draw on  
3 its judicial experience and common sense." Iqbal, 556 U.S. at 679.

4 **III. Discussion**

5  
6 A. Lanham Act False Designation and Unfair Business Practices

7 The Lanham Acts prohibits uses in commerce of:

8  
9 any word, term, name, symbol, or device, or any  
10 combination thereof, or any false designation of origin,  
11 false or misleading description of fact, or false or  
12 misleading representation of fact, which . . . is likely  
13 to cause confusion, or to cause mistake, or to deceive as  
to the affiliation, connection, or association of such  
person with another person, or as to the origin,  
sponsorship, or approval of his or her goods, services,  
or commercial activities by another person

14 15 U.S.C. § 1125(a)(1). Defendants argue that the SAC fails to  
15 state a claim for false designation of origin because Defendants  
16 are labeling each of their products with an A&C tag, and are,  
17 therefore, not "passing off" A&C products as Brian's products.

18 Defendants' argument has no merit. By its own terms, the  
19 Lanham Act encompasses false endorsements. See Cairns v. Franling  
20 Mint Co., 292 F.3d 1139, 1149 (9th Cir. 2002); see also Brown v.  
21 Elec. Arts, Inc., 724 F.3d 1235, 1239 n.1 (9th Cir. 2013).

22 Plaintiffs respond that their claim is based not on palming off,  
23 but "upon Defendant [sic] using celebrities . . . who are in  
24 reality wearing Plaintiffs' products to sell Defendants [sic]  
25 products." (Opposition at 10:5-9.) Defendants reply that the SAC  
26 makes no such allegation. (Reply at 4.)

1 Defendants ignore the clear language of the SAC, including  
2 allegations that "Defendants . . . stole press and publicity photos  
3 from [Brian] regarding Nina Garcia and Justin Bieber, who were  
4 wearing [Brian's] products. Defendants . . . copied and pasted the  
5 photos to the A&C website, making it appear such celebrities were  
6 wearing the [Defendants'] imitation products." (SAC ¶ 80.) The  
7 SAC includes other, similar allegations that Defendants  
8 misappropriated photographs of celebrities wearing Brian's  
9 products, and specifically names over a dozen celebrities. (SAC ¶¶  
10 81-82, 84-85.) The SAC adequately alleges claims for false  
11 designation of origin and unfair business practices under the  
12 Lanham Act.

13 B. Trade Dress Dilution

14 As provided in 15 U.S.C. § 25(c):

15 Subject to the principles of equity, the owner of a  
16 famous mark that is distinctive, inherently or through  
17 acquired distinctiveness, shall be entitled to an  
18 injunction against another person who, at any time after  
19 the owner's mark has become famous, commences use of a  
20 mark or trade name in commerce that is likely to cause  
21 dilution by blurring or dilution by tarnishment of the  
22 famous mark, regardless of the presence or absence of  
23 actual or likely confusion, of competition, or of actual  
24 economic injury.<sup>1</sup>

25 15 U.S.C. § 25(c)(1). Defendants devote three lines of text to  
26 their argument that this claim must fail because (1) the SAC does  
27 not allege that Brian's parody trade dress is famous and (2)  
28 Defendants began using the trade dress before it became famous.  
(Mot. at 8:5-7.)

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<sup>1</sup> Other remedies beyond injunctive relief may also be available. 15 U.S.C. § 1125(c)(5)

1 Defendants again ignore the clear language of the SAC. The  
2 SAC repeatedly alleges that the trade dress is widely recognized by  
3 consumers and in the fashion industry. (SAC ¶¶ 19-22, 24.)  
4 Furthermore, the SAC alleges that an entire category of "BLTEE  
5 products" uses the trade dress at issue, and has done so for over  
6 five years. (SAC ¶¶ 18, 21.) The SAC alleges that the BLTEE  
7 products, which feature the trade dress, have "been in existence"  
8 for over five years, and that "[o]ver the years, millions of  
9 consumers have been exposed to the BLTEE [p]roducts through  
10 extensive advertising . . . , appearance of the BLTEE Products on  
11 television shows, in motion pictures, and on the Internet . . . ."  
12 (SAC ¶¶ 18, 21). While Defendants seek to characterize this  
13 dispute as involving only the single "Ballin" design, the SAC's  
14 trade dress dilution claim is broader in both descriptive and  
15 temporal scope.<sup>1</sup> Defendants' arguments, therefore, fail.

16 **IV. Conclusion**

17  
18 For the reasons stated above, Defendants' Motion to Dismiss is  
19 DENIED.

20 IT IS SO ORDERED.

21 Dated: April 15, 2014

  
DEAN D. PREGERSON

22 United States District Judge  
23  
24  
25

26 \_\_\_\_\_  
27 <sup>1</sup> The court reiterates that on a motion to dismiss, the  
28 alleged facts are accepted as true and construed in favor of the  
plaintiff. Resnick, 213 F.3d at 447. Nothing in this Order shall  
be read as a commentary on Plaintiffs' likelihood of success on the  
merits of their claims.