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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KETAB CORP.,)	2:14-cv-07241-RSWL (MRW)
)	
Plaintiff,)	
)	
vs.)	ORDER re: Plaintiff's
)	Motion for
)	Reconsideration [63]
)	
MESRIANI LAW GROUP, RODNEY)	
MESRIANI, SEYED ALI)	
LIMONADI, ALI LIMONADI,)	
STUDIO CINEGRAPHIC LOS)	
ANGELES dba IRTV, MELLI)	
YELLOW PAGES, INC., and)	
DOES 1 through 10,)	
inclusive,)	
)	
Defendants.)	
)	
)	

Currently before the Court is Plaintiff Ketab Corp.'s ("Plaintiff") Motion for Reconsideration [63] ("Motion") in which Plaintiff moves pursuant to Local Civil Rule 7-18 for reconsideration of the Court's February 6, 2015, Order [42] ("Order") granting Defendants Rodney Mesriani and Mesriani Law Group's ("Mesriani Defendants") Motion to Dismiss.

- 1) Federal Unfair Competition & False Designation of Origin, in violation of 15 U.S.C. § 1125(a);
- 3) Federal Trademark Dilution, in violation of 15 U.S.C. § 1125(c);
- 4) California Common Law Trademark Infringement;
- 5) California Unfair Competition, in violation of Cal. Bus. & Prof. Code § 17200 et seq.;
- 6) Intentional Interference with Economic Relations;
- and
- 7) Negligent Interference with Economic Relations. Compl. ¶¶ 36-45, 58-87, 94-103.

On February 6, 2015, the Court issued its Order [42] granting Mesriani Defendants' Motion to Dismiss Plaintiff's Complaint against them.

The Court dismissed with prejudice¹ the following claims:

- 1) Federal Trademark Infringement & Counterfeiting, under 15 U.S.C. § 1114;
- 2) Federal Unfair Competition & False Designation of Origin, under 15 U.S.C. § 1125(a);
- 3) California Common Law Trademark Infringement; and
- 4) California Unfair Competition, under Cal. Bus. & Prof. Code § 17200 et seq.

Feb. 6, 2015, Order ("Order") 16:5-18, ECF No. 42.

¹ The Court dismissed these claims with prejudice for their failure as a matter of law. See Feb. 6, 2015, Order ("Order") 16:5-18, ECF No. 42 (citing Murray v. Cable Nat'l Broad. Co., 86 F.3d 858, 860-61 (9th Cir. 1996)).

1 The Court dismissed without prejudice² the
2 following claims:
3 1) Federal Trademark Dilution, under 15 U.S.C. §
4 1125(c);
5 2) Intentional Interference with Economic Relations;
6 and
7 3) Negligent Interference with Economic Relations.
8 Order 16:20-17:3.

9 On March 13, 2015, Plaintiff filed the present
10 Motion for Reconsideration [63]. The parties timely
11 filed their respective Opposition [75] and Reply [77].
12 Plaintiff's Motion, set for hearing on April 14, 2015,
13 was taken under submission [90] on April 9, 2015.

14 II. LEGAL STANDARD

15 Plaintiff moves for reconsideration of the Court's
16 Order pursuant to Local Civil Rule 7-18. Pl.'s Mot.
17 1:1-5, ECF No. 63. A motion for reconsideration under
18 Local Rule 7-18 may be made on only the following
19 grounds:

20 (a) a material difference in fact or law from
21 that presented to the Court before such
22 decision that in the exercise of reasonable
23 diligence could not have been known to the
24 party moving for reconsideration at the time of
25 such decision, or

26
27 ² The Court dismissed these claims without prejudice because
28 these claims failed merely for insufficient factual allegations,
not as a matter of law. See, e.g., Order 11:18-26.

1 (b) the emergence of new material facts or a
2 change of law occurring after the time of such
3 decision, or

4 (c) a manifest showing of a failure to consider
5 material facts presented to the Court before
6 such decision.

7 C.D. Cal. Civ. L.R. 7-18; see In re Countrywide Fin.
8 Corp. Mortg.-Backed Sec. Litig., 966 F. Supp. 2d 1031,
9 1036 (C.D. Cal. 2013).

10 A motion for reconsideration pursuant to Local Rule
11 7-18 must not "repeat any oral or written argument made
12 in support of or in opposition to the original motion."

13 C.D. Cal. Civ. L.R. 7-18. Consistent with Local Rule
14 7-18, a "'motion for reconsideration should not be
15 granted, absent highly unusual circumstances, unless
16 the district court is presented with newly discovered
17 evidence, committed clear error, or if there is an
18 intervening change in the controlling law.'" Carroll
19 v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003).³

20 _____
21 ³ Plaintiff, who moves pursuant to Local Rule 7-18, is
22 limited to the grounds permitted by Local Rule 7-18. C.D. Cal.
23 Civ. L.R. 7-18. The Carroll standard does not provide *additional*
24 grounds for reconsideration, beyond the grounds permitted in
25 Local Rule 7-18, such as an added "clear error" ground that is
26 not permitted by Local Rule 7-18, but merely sets a "cap" on when
27 a motion for reconsideration may be granted: if there is not a
28 showing of either 1) highly unusual circumstances, 2) newly
discovered evidence, 3) clear error, or 4) an intervening change
in the controlling law, then reconsideration is not proper. 342
F.3d at 945. Local Rule 7-18 further limits the grounds for
reconsideration pursuant to Local Rule 7-18, and is thus narrower
than the standard articulated in Carroll and the standards for
reconsideration under Rule 59 or Rule 60 of the Federal Rules of

1 "Whether to grant a motion for reconsideration under
2 Local Rule 7-18 is a matter within the court's
3 discretion." Daghlian v. DeVry Univ., Inc., 582 F.
4 Supp. 2d 1231, 1251 (C.D. Cal. 2007).

5 **III. DISCUSSION**

6 Here, Plaintiff moves for reconsideration pursuant
7 to Local Rule 7-18 on the following three grounds: (1)
8 "the Court committed clear error and the initial
9 decision was manifestly unjust"; (2) Plaintiff "has
10 newly-discovered material evidence that could not have
11 been discovered earlier"; and (3) "the Court failed to
12 consider material facts presented by" Plaintiff and
13 Mesriani Defendants. Mot. 1:10-14.

14 **A. Alleged "Clear Error" re: Counterfeiting Claim**

15 **Analysis**

16 Plaintiff argues that the Court's Order "contained
17 manifest errors of law" because the Court "mis-cited
18 and mis-applied case law by requiring that a
19 'counterfeit' mark be 'identical' to the registered
20 mark." Mot. 3:22-24.

21 Plaintiff's first ground, that the Court committed
22 "clear error" resulting in a manifestly unjust
23 decision, is not a permitted ground for reconsideration
24 under Local Rule 7-18.⁴ C.D. Cal. Civ. L.R. 7-18. As

25 _____
26 Civil Procedure. See Fed. R. Civ. P. 59(e); Fed. R. Civ. P. 60.

27 ⁴ "Clear error" is a ground for reconsideration under Rule
28 59 of the Federal Rules of Civil Procedure, but Plaintiff cannot
move pursuant to Rule 59 because Plaintiff's Motion is untimely

1 such, Plaintiff's argument of "clear error" cannot
2 serve as a basis for reconsideration under Local Rule
3 7-18 by which Plaintiff moves.

4 But even if Plaintiff's "clear error" argument is
5 considered, Plaintiff's argument does not justify
6 reconsideration of the Court's Order for the following
7 reasons.

8 Plaintiff states that the Court erroneously cited
9 Louis Vuitton Malletier, S.A. v. Akonac Solutions,
10 Inc., 658 F.3d 936, 946 (9th Cir. 2011) "for the
11 proposition that in order to prosecute a cause of
12 action for 'counterfeiting' under 15 U.S.C. §1114,
13 plaintiff must allege and prove that the offending mark
14 is 'identical' to the plaintiff's registered
15 trademark." Mot. 4:21-6:9. But even if the Court's
16 citation to the "identical" standard in Louis Vuitton
17 was mistaken, such a mistake does not merit
18 reconsideration because the Court's decision to dismiss
19 with prejudice Plaintiff's counterfeiting claim was not
20 based on the Louis Vuitton standard. The Court
21 ultimately dismisses Plaintiff's counterfeiting claim
22 with prejudice because the Court found "that any

24 under Rule 59. Fed. R. Civ. P. 59; McDowell v. Calderon, 197
25 F.3d 1253, 1255 (9th Cir. 1999). Furthermore, Plaintiff
26 expressly states that it moves pursuant to Local Rule 7-18, and
27 no other rule. Pl.'s Mot. 1:1-5. Because Rule 7-18 "provides
28 for no time limitation for a motion for reconsideration,"
Plaintiff properly moves for reconsideration under Local Rule 7-
18. Williams v. UMG Recordings, Inc., 281 F. Supp. 2d 1177, 1185
n.13 (C.D. Cal. 2003).

1 amendment would be futile because the services provided
2 by Plaintiff and Mesriani Defendants are totally
3 unrelated." Order 8:5-21. The Court's conclusion was
4 based on clear Ninth Circuit precedent, which states
5 that if a court "determines as a matter of law from the
6 pleadings that the goods [or services] are unrelated
7 and confusion is unlikely, the complaint should be
8 dismissed." Murray v. Cable National Broadcasting Co.,
9 86 F.3d 858, 860-61 (9th Cir. 1996).

10 Additionally, the Court's separate analysis of
11 Plaintiff's trademark infringement claim, which never
12 cites Louis Vuitton, necessarily applies to and
13 includes Plaintiff's counterfeiting claim because a
14 counterfeiting claim *is* a trademark infringement claim,
15 but with additional requirements of proof. See, e.g.,
16 Compl. ¶ 37 (stating that the First Claim for Relief is
17 "trademark infringement and counterfeiting arising
18 under 15 U.S.C. § 1114"); 15 U.S.C. §§ 1114, 1127. In
19 other words, because Plaintiff's trademark infringement
20 claim failed as a matter of law, Plaintiff's
21 counterfeiting claim necessarily also failed as a
22 matter of law. See 15 U.S.C. §§ 1114, 1127.⁵ As such,
23

24 ⁵ To further explain: Section 1114 imposes liability for
25 infringing use of "any reproduction, *counterfeit*, copy, or
26 colorable imitation of a registered mark." 15 U.S.C. § 1114
27 (emphasis added). Section 1127 defines a counterfeit mark as a
28 "spurious mark which is identical with, or substantially
indistinguishable from, a registered mark." 15 U.S.C. § 1127.
As such, a claim for "counterfeiting" under the Lanham Act *must*,
by necessity, first establish a claim of trademark infringement.

1 the Court's Order properly dismissing Plaintiff's
2 trademark infringement claim also properly dismisses
3 Plaintiff's counterfeiting claim, making the Court's
4 separate analysis of Plaintiff's counterfeiting claim
5 unnecessary and immaterial to the Court's ultimate
6 decision to dismiss with prejudice Plaintiff's claim
7 under 15 U.S.C. § 1114.⁶ For these reasons, even if
8 Plaintiff's "clear error" argument is considered,
9 Plaintiff's argument does not justify reconsideration.

10 **B. "Unrelated Services" Analysis**

11 Plaintiff argues that "the Court's strict
12 requirement that the goods or services being engaged in
13 and promoted by MESRIANI be related to the PLAINTIFF'S
14 goods or services in order to find 'likelihood of
15 confusion' is simply wrong." Mot. 4:15. An argument
16 that the Court's decision is "simply wrong" is not a
17 permissible ground for reconsideration under Local Rule
18 7-18, and the Court will not reconsider its Order on
19 such a basis.

20 **C. Court's Alleged Failure to Consider Material Facts**

21 Plaintiff's assertion that the Court "failed to
22 consider material facts" is a permissible ground for
23

24 ⁶ This is evident by the fact that the Court, in its Order,
25 dismissed with prejudice the counterfeiting claim and the
26 trademark infringement claim for the exact same reason:
27 Plaintiff's pleaded facts established that Plaintiff's and
28 Defendants' services were totally unrelated and thus that
confusion was unlikely as a matter of law. See Order 8:1-10:27
(citing Murray, 86 F.3d at 860-61).

1 reconsideration under Local Rule 7-18. C.D. Cal. Civ.
2 L.R. 7-18. Plaintiff argues that the Court failed to
3 consider Plaintiff's allegations in its Complaint that
4 Mesriani Defendants had "adopted and used in commerce
5 identical or confusingly similar versions of one or
6 more of the KETAB MARKS." Compl. ¶ 40; Reply 3:16-19,
7 ECF No. 77. Plaintiff argues that its mere allegations
8 of confusing similarity are "factual allegations" that
9 should be assumed true at the motion to dismiss stage
10 of an action. Mot. 3:27-4:3.

11 While Plaintiff's Complaint does allege that
12 Mesriani Defendants "used in commerce 'identical or
13 confusingly similar versions'" of Plaintiff's alleged
14 trademarks, such allegations are not factual
15 allegations, but legal assertions "stated in the form
16 of factual allegations."⁷ Unical Enters., Inc. v.
17 Stoner & Co., No. CV 05-3511 CBM (PJWx), 2006 WL
18 5671238, at *1 (C.D. Cal. Apr. 17, 2006) ("[T]he Court
19 is not bound to assume the truth of legal conclusions
20 merely because they are stated in the form of factual
21 allegations."). Legal assertions are not assumed true

22
23 ⁷ It would be absurd for a court to allow a pleading to
24 survive a motion to dismiss merely because the plaintiff alleged,
25 without more, that the defendant's mark was confusingly similar
26 to plaintiff's mark. If this were the case, a plaintiff could
27 pair any two marks in the world and survive a motion to dismiss
28 merely by saying the words "confusingly similar" in its
complaint. As such, merely stating that two marks are
"confusingly similar" is not a factual allegation, but a legal
assertion, which is not assumed true when determining a motion to
dismiss. Unical, 2006 WL 5671238, at *1.

1 at the motion to dismiss stage of an action. Id. A
2 "formulaic recitation of the elements" of a claim will
3 not survive a motion to dismiss. Bell Atlantic Corp.
4 v. Twombly, 550 U.S. 544, 555 (2007).

5 The Court, assuming all of Plaintiff's factual
6 allegations to be true, found that the facts pleaded in
7 Plaintiff's Complaint established that confusion was
8 unlikely as a matter of law due to the total
9 unrelatedness of Defendants' services (legal services)
10 and Plaintiff's services (information directory and
11 marketing services). Murray, 86 F.3d at 860-61; Kaisha
12 v. Nat'l Health Trends Corp., (C.D. Cal. Jan. 10, 2005)
13 ("If the goods are totally unrelated, there can be no
14 infringement because confusion is unlikely." (quoting
15 AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348 (9th
16 Cir. 1979)). Because Plaintiff does not show that the
17 Court failed to consider material facts,
18 reconsideration of the Court's Order on this ground is
19 not warranted.⁸

21 ⁸ Plaintiff also argues that the Court improperly required
22 Plaintiff to *prove* a likelihood of confusion at the pleading
23 stage, see Reply 3:25-28, but this is incorrect--the Court found
24 that the facts plead by Plaintiff established an unlikelihood of
25 confusion as a matter of law, not that Plaintiff failed to prove
26 likelihood of confusion because of a *lack* of facts. When
27 Plaintiff's facts establish an unlikelihood of confusion as a
28 matter of law, Plaintiff's complaint fails to plead a "plausible"
claim for trademark infringement. Eclectic Props. E., LLC v.

1 **D. Plaintiff's Alleged Newly Discovered Evidence**

2 Plaintiff alleges it has discovered new material
3 evidence justifying reconsideration of the Court's
4 Order. Mot. 2:21-24. An assertion of "newly discovered
5 facts" is a permissible ground for reconsideration
6 under Local Rule 7-18. C.D. Cal. Civ. L.R. 7-18.

7 Specifically, Plaintiff claims that Mesriani
8 Defendants provide not only legal services, but "also
9 provided legal directory services to other contracted
10 attorneys for areas of law that MESRIANI did not
11 practice in but earned a referral fee or compensation
12 for such legal directory services under those same
13 marks." Mot. 2:21-24. Plaintiff asserts that, "since
14 the filing of the Complaint," Plaintiff has "discovered
15 that the web address of 'www.08law.net' diverts to
16 another website called 'www.findbestlawfirm.com.'"
17 Reply 2:22-27. Plaintiff asserts that this "[c]learly"
18 shows that Mesriani Defendants are "in direct
19 competition with" Plaintiff. Id.; Mot. 4:16-20.
20 Mesriani Defendants deny these factual allegations.
21 Opp'n 4:26-5:13.

22 Regardless of whether Plaintiff's new evidence is
23 true, Plaintiff does not explain why it could not have
24

25 Marcus & Millichap Co., 751 F.3d 990, 997 (9th Cir. 2014).
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1 discovered this evidence prior to the Court's Order and
2 has, in fact, stated that it "discovered" this "new
3 evidence" "since the filing of the Complaint," not
4 since the Court's Order. See Reply 2:22-27. It is
5 Plaintiff's burden to establish that the asserted new
6 evidence could not have been discovered with reasonable
7 diligence prior to the Court's decision. Here,
8 Plaintiff has not met that burden. As such, the Court
9 does not find that reconsideration is justified on the
10 basis of Plaintiff's alleged newly discovered evidence.

11 In light of the above discussion, the Court, in its
12 discretion, finds that reconsideration of the Court's
13 February 6, 2015, Order granting Mesriani Defendants'
14 Motion to Dismiss is unwarranted and thus **DENIES**
15 Plaintiff's Motion for Reconsideration [63].

16 **IV. CONCLUSION**

17 Based on the foregoing, the Court **DENIES**
18 Plaintiff's Motion for Reconsideration [63].

19

20 **IT IS SO ORDERED.**

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DATED: May 5, 2015

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RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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