

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

**‘O’**

Case No. 2:15-cv-00579-CAS(ASx) Date August 30, 2016

Title BRIGHTON COLLECTIBLES, LLC v. BELIEVE PRODUCTIONS, INC.

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) PLAINTIFF’S MOTION FOR LEAVE TO AMEND (Dkt. 33, filed July 27, 2016)

## I. INTRODUCTION AND PROCEDURAL HISTORY

On January 26, 2015, plaintiff Brighton Collectibles, LLC (“Brighton”) filed a complaint against defendant Believe Productions, Inc. (“Believe”). Plaintiff alleges one claim, Copyright Infringement pursuant to 17 U.S.C. § 101 et seq. The gravamen of plaintiff’s claim is that defendant violated its copyright in a piece of jewelry.

On July 27, 2015, plaintiff filed a motion for leave to file an amended complaint. Dkt. 33. On August 22, 2016, defendant filed an opposition to plaintiff’s motion for leave. Dkt. 35. On August 26, 2016, plaintiff filed a reply to defendant’s opposition. Dkt. 36. The gravamen of plaintiff’s proposed amendment is that defendant unlawfully used photographs of plaintiff’s jewelry in its promotional materials.

The deadline for amending pleadings was October 2, 2015. Dkt. 15. On May 18, 2016, this Court granted the parties’ stipulated continuance of case deadlines, setting the discovery deadline for November 1, 2016, the pre-trial conference for February 6, 2016, and the trial for March 7, 2017. Dkt. 31. Having considered the parties’ arguments, the Court finds and concludes as follows.<sup>1</sup>

<sup>1</sup> The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of September 12, 2016 is vacated, and the matter is hereby taken under submission.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

‘O’

Case No.	2:15-cv-00579-CAS(ASx)	Date	August 30, 2016
Title	BRIGHTON COLLECTIBLES, LLC v. BELIEVE PRODUCTIONS, INC.		

## II. LEGAL STANDARD

The Court set October 2, 2015, as the deadline for amending pleadings. Dkt. 15. Therefore, plaintiff must demonstrate “good cause” for amending a scheduling order pursuant to Federal Rule of Civil Procedure 16 (“Rule 16”). Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

Rule 16(b)(4) provides that a scheduling order shall be modified “only for good cause.” “Unlike Rule 15(a)’s liberal amendment policy . . . Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” Id. Accordingly, while the court may consider the “existence or degree of prejudice” to the opposing party, the focus of the court’s inquiry is upon the moving party’s explanation for failure to timely move for leave to amend. Id. “The district court is given broad discretion in supervising the pretrial phase of litigation.” Id. at 607 (quoting Miller v. Safeco Title Ins. Co., 758 F.2d 364, 369 (9th Cir. 1985)).

## III. DISCUSSION

In this case, plaintiff has shown good cause for modifying the scheduling order. Plaintiff’s proposed amendment would add false designation of origin and common law unfair competition claims. Defendant argues that, on an undetermined date in September 2015 (prior to the October 2, 2015 amendment deadline), defendant provided the marketing materials to plaintiff that are now the basis for plaintiff’s proposed amendment. Plaintiff avers that it did not know the facts supporting its additional claims until after the amendment deadline, Wesley Decl. ¶¶3-4, and did not “obtain convincing proof” until a deposition on February 29, 2016, when it confronted defendant’s president regarding its marketing efforts, Plaintiff Reply at 4. Both parties acknowledge that the facts underlying the additional proposed claims were the subject of a deposition on February 29, 2016.

Plaintiff claims it did not seek to amend the complaint earlier because both parties were working to settle the case. Wesley Decl. ¶¶6. Following an unsuccessful mediation on July 20, 2016, plaintiff’s counsel informed defendant of its intent to amend the complaint to include additional claims. Wesley Decl. ¶¶7. Accordingly, there appears to be no prejudice to defendant, who has had constructive notice of the same underlying

