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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Desert European Motorcars,)
Ltd., a California)
corporation,)
)
Plaintiff,)
)
v.)
)
Desert European Motorcars,)
Inc., dba Desert European)
Motorcars, an Arizona)
corporation, and DOES 1-10)
inclusive,)
)
Defendants.)
_____)
Desert European Motorcars,)
Inc., dba Desert European)
Motorcars, an Arizona)
corporation,)
)
Counterclaimant,)
)
v.)
)
Desert European Motorcars,)
Ltd., a California)
corporation)
)
Counterdefendant.)

EDCV 11-197 RSWL (DTBx)

**ORDER Re: Plaintiff's
Motion To Strike, Or In
The Alternative, For
More Definite Statement
[15]**

On August 23, 2011, Plaintiff and Counterdefendant
Desert European Motorcars, Ltd.'s Motion to Strike, or

1 in the alternative, For More Definite Statement [15]
2 came on for regular calendar before this Court. Having
3 considered all the papers and arguments pertaining to
4 this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**

5 The Court hereby **GRANTS IN PART AND DENIES IN PART**
6 Plaintiff and Counterdefendant's Motion.

7 **I. Legal Standard**

8 Federal Rule of Civil Procedure 12(f) sets forth
9 that "[t]he court may strike from a pleading an
10 insufficient defense or any redundant, immaterial,
11 impertinent, or scandalous matter." Fed. R. Civ. P.
12 12(f). Federal Rule of Civil Procedure 8(b)(A)
13 requires that a party state a short and plain statement
14 in its defenses when responding to a pleading. Fed. R.
15 Civ. P. 8(b)(A). However, properly pleaded affirmative
16 defenses must "give plaintiff fair notice of the
17 defense." Wyshak v. City Nat'l Bank, 607 F.2d 824, 827
18 (9th Cir. 1979). Where a court strikes an affirmative
19 defense, leave to amend should be freely given so long
20 as there is no prejudice to the moving party. Id. at
21 826.

22 Plaintiff and Counterdefendant Desert European
23 Motorcars, Ltd. ("Plaintiff") moves to strike all
24 twenty-eight of Defendant and Counterclaimant Desert
25 European Motorcars, Inc.'s ("Defendant") affirmative
26 defenses and portions of Defendant's Answer and
27 Counterclaim pursuant to Federal Rule of Civil
28 Procedure 12(f). In the alternative, Plaintiff moves

1 for a more definite statement pursuant to Federal Rule
2 of Civil Procedure 12(e).

3 **II. Discussion**

4 **A. Plaintiff's Request for Judicial Notice**

5 The Court **GRANTS** Plaintiff's Request for Judicial
6 Notice of the motion to suspend granted by the
7 Trademark Trial and Appeal Board pursuant to Federal
8 Rule of Evidence 201. Fed. R. Evid. 201. See United
9 States v. 14.02 Acres of Land More or Less in Fresno
10 Cnty., 547 F.3d 943, 955 (9th Cir. 2008) (citing
11 Interstate Natural Gas Co. v. S. Cal. Gas Co., 209 F.2d
12 380, 385 (9th Cir. 1954)).

13 **B. Plaintiff's Motion to Strike Defendant's**
14 **Affirmative Defenses**

15 1. Plaintiff's Motion To Strike The First
16 Affirmative Defense Of Failure To State A
17 Claim

18 The Court **GRANTS** Plaintiff's Motion to Strike the
19 first affirmative defense of Failure to State a Claim.

20 The Court finds that failure to state a claim is an
21 assertion of a defect in Plaintiff's prima facie case,
22 and not an affirmative defense. J & J Sports
23 Prods., Inc. v. Enedina Soto, 2010 WL 3911467, at
24 *1 (S.D. Cal. Sept. 28, 2010). Furthermore, the Court
25 finds that this affirmative defense is a mere legal
26 conclusion without supporting facts linking that theory
27 to the Case at bar, and therefore is insufficient to
28 give Plaintiff fair notice of the basis of this

1 defense. Oarbon.com, Inc. v. eHelp Corp., 315 F. Supp.
2 2d 1046, 1049 (C.D. Cal. 2004),

3 Accordingly, the Court **STRIKES without leave to**
4 **amend** Defendant's first affirmative defense of Failure
5 to State a Claim.

6 2. Plaintiff's Motion To Strike The Second
7 Affirmative Defense Of Unclean Hands

8 The Court **GRANTS** Plaintiff's Motion to Strike the
9 second affirmative defense of Unclean Hands.

10 The Court finds that Defendant's second affirmative
11 defense fails to allege sufficient facts so as to put
12 Plaintiff on fair notice of the defense. See CTF Dev.,
13 Inc. v. Penta Hospitality, LLC, 2009 WL 3517617, *7
14 (N.D. Cal. Oct. 26, 2009) (finding that "simply stating
15 that a claim fails due to plaintiff's unclean hands is
16 not sufficient to notify the plaintiff what behavior
17 has allegedly given them 'unclean hands'").

18 Specifically, the Court finds this affirmative defense
19 "simply states a legal conclusion or theory without the
20 support of facts explaining how it connects to the
21 instant case," and is therefore insufficient to provide
22 fair notice to Plaintiff. Pepsico, Inc. v. J.K.
23 Distribs., Inc., 2007 WL 2852647, at *2 (C.D. Cal.
24 Sept. 14, 2007).

25 Accordingly, the Court **GRANTS** Plaintiff's Motion to
26 Strike the second affirmative defense of Unclean Hands.
27 However, because Defendant may be able to allege
28 additional facts here to support this affirmative

1 defense, the Court **STRIKES** with 20 days leave to amend
2 Defendant's second affirmative defense of Unclean
3 Hands.

4 3. Plaintiff's Motion To Strike The Third
5 Affirmative Defense Of Failure To Mitigate

6 The Court **DENIES** Plaintiff's Motion to Strike the
7 third affirmative defense of Failure to Mitigate.

8 "[C]ourts have typically held that a generalized
9 statement ... meets defendant's pleading burden with
10 respect to the affirmative defense of damage
11 mitigation." Bd. of Trs. of San Diego Elec. Pension
12 Trust v. Bigley, Elec., Inc., 2007 WL 2070355, at *3
13 (S.D. Cal. July 12, 2007). As such, the Court finds
14 that, while this affirmative defense contains a
15 generalized statement, Defendant has met his pleading
16 burden here with respect to this defense.

17 Accordingly, the Court **DENIES** Plaintiff's Motion to
18 Strike the third affirmative defense of Failure to
19 Mitigate.

20 4. Plaintiff's Motion To Strike The Fourth
21 Affirmative Defense Of Waiver

22 The Court **GRANTS** Plaintiff's Motion to Strike the
23 fourth affirmative defense of Waiver.

24 To establish waiver, Defendant must show that
25 Plaintiff intentionally relinquished or abandoned a
26 known right. United States v. Perez, 116 F.3d 840, 845
27 (9th Cir. 1997). See J&J Sports Prods., Inc. v.
28 Montanez, 2010 WL 5279907, at *3.

1 Here, Defendant's Answer and Counterclaim fails to
2 set forth any facts with respect to this alleged
3 waiver. As such, the Court finds that this affirmative
4 defenses is a mere reference to a legal doctrine and is
5 insufficient to give Plaintiff fair notice of the
6 alleged acts giving rise to this defense. See
7 Qarbon.com Inc. v. eHelp Corp., 315 F. Supp. 2d 1046,
8 1049 (N.D. Cal. 2004)(noting that "[a] reference to a
9 doctrine, like a reference to statutory provisions, is
10 insufficient notice" and does not meet the pleading
11 standard of Rule 8(b)).

12 Accordingly, the Court **GRANTS** Plaintiff's Motion to
13 Strike the fourth affirmative defense of Waiver.
14 However, because Defendant may be able to allege
15 additional facts to support this affirmative defense,
16 the Court **STRIKES with 20 days leave to amend**
17 Defendant's fourth affirmative defense of Waiver.

18 5. Plaintiff's Motion To Strike The Fifth
19 Affirmative Defense Of Estoppel

20 The Court **GRANTS** Plaintiff's Motion to Strike the
21 fifth affirmative defense of Estoppel.

22 To establish a defense of estoppel, "a party must
23 show that the adverse party, either intentionally or
24 under circumstances that induced reliance, engaged in
25 conduct upon which [the relying party] relied and that
26 the relying party acted or changed [its] position to
27 [its] detriment." Solis v. Couturier, 2009 WL 2022343,
28 at *2 (E.D. Cal. July 8, 2009).

1 Here, Defendant's Answer and Counterclaim fails to
2 set forth any facts or information with respect to
3 Plaintiff's inducement or Defendant's detrimental
4 reliance. As such, the Court finds that Defendant
5 merely pleads a legal conclusion here, and therefore
6 fails to give Plaintiff fair notice of the conduct
7 giving rise to this defense. See id.

8 Accordingly, the Court **GRANTS** Plaintiff's Motion to
9 Strike the fifth affirmative defense of Estoppel.
10 However, because Defendant may be able to allege
11 additional facts to support this affirmative defense,
12 the Court **STRIKES with 20 days leave to amend**
13 Defendant's fifth affirmative defense of Estoppel.

14 6. Plaintiff's Motion To Strike The Sixth
15 Affirmative Defense Of Statute Of
16 Limitations

17 The Court **GRANTS** Plaintiff's Motion to Strike the
18 sixth affirmative defense of Statute of Limitations.

19 The Court finds that Defendant fails to plead
20 sufficient facts here to give Plaintiff fair notice as
21 to how this Action is barred by the applicable statute
22 of limitations. See J&J Sports Prods., Inc. v.
23 Montanez, 2010 WL 5279907, at *3 (E.D. Cal. Dec. 13,
24 2010)(striking defendants' affirmative defense for
25 statute of limitations based on the fact that
26 defendants failed to plead any facts or legal theory to
27 give plaintiff notice of how the action was barred by
28 the statute of limitations). Specifically, Defendant

1 fails to plead any facts here regarding this defense,
2 merely setting forth that the Action is barred by the
3 applicable statutes of limitations. See CTF Dev., Inc.
4 v. Penta Hospitality, LLC, 2009 WL 3517617, at *8 (N.D.
5 Cal. Oct. 26, 2009). As such, the Court finds that
6 this affirmative defense pleads a legal conclusion and
7 therefore fails to give Plaintiff fair notice of the
8 defense.

9 Accordingly, the Court **GRANTS** Plaintiff's Motion to
10 Strike the sixth affirmative defense of Statute of
11 Limitations. However, because Defendant may be able to
12 allege additional facts to support this affirmative
13 defense, the Court **STRIKES with 20 days leave to amend**
14 Defendant's sixth affirmative defense of Statute of
15 Limitations.

16 7. Plaintiff's Motion To Strike The Seventh
17 Affirmative Defense Of Laches

18 The Court **GRANTS** Plaintiff's Motion to Strike the
19 seventh affirmative defense of Laches.

20 "[L]aches is a valid defense to Lanham Act claims
21 for both monetary damages and injunctive relief."
22 Miller v. Glenn Miller Prods., 318 F. Supp. 2d 923, 941
23 (C.D. Cal. 2004). In order to establish the defense of
24 laches, "a defendant must allege 'neglect or delay in
25 bringing suit to remedy an alleged wrong, which taken
26 together with lapse of time and other circumstances,
27 causes prejudice to the adverse party and operates as
28 an equitable bar.'" Advanced Cardiovascular Sys, Inc. v.

1 Medtronic, Inc., 1996 WL 467273, at *4 (N.D. Cal. July
2 24, 1996)(quotation omitted).

3 Here, the Answer and Counterclaim fails to set
4 forth any facts regarding how Plaintiff's conduct
5 allegedly gave rise to this defense of laches. As
6 laches is an equitable doctrine and "its application
7 depends on the facts of the particular case," the Court
8 finds that Defendant fails to set forth sufficient
9 facts to give Plaintiff fair notice of the conduct
10 giving rise to this defense. Id.

11 Accordingly, the Court **GRANTS** Plaintiff's Motion to
12 Strike the seventh affirmative defense of Laches.
13 However, because Defendant may be able to allege
14 additional facts to support this affirmative defense,
15 the Court **STRIKES with 20 days leave to amend**
16 Defendant's seventh affirmative defense of Laches.

17 8. Plaintiff's Motion To Strike The Eighth
18 Affirmative Defense Of Good Faith

19 The Court **GRANTS** Plaintiff's Motion to Strike the
20 eighth affirmative defense of Good Faith.

21 Defendant's eight affirmative defense alleges that
22 "it acted in good faith with respect to the matters
23 asserted in the [First Amended Complaint]." [Def.'s
24 Answer and Counterclaim, 8.] While "[g]ood faith or
25 lack of wrongful intent does not provide valid defense
26 to charge of trademark infringement," the Court finds
27 that the Answer and Counterclaim fails to set forth
28 sufficient facts regarding the applicability of this

1 defense to the additional claims at issue in this
2 Action. Coca-Cola Co. v. Overland, Inc., 692 F.2d 1250
3 (9th. Cir. 1982). Therefore, the Court finds that
4 Defendant fails to give Plaintiff fair notice as to the
5 nature of this defense. See J&J Sports Prods., Inc. v.
6 Montanez, 2010 WL 5279907, at *3 (E.D. Cal. Dec. 13,
7 2010).

8 Accordingly, the Court **GRANTS** Plaintiff's Motion to
9 Strike the eighth affirmative defense of Good Faith.
10 However, because Defendant may be able to allege
11 additional facts to support this affirmative defense,
12 the Court **STRIKES with 20 days leave to amend**
13 Defendant's eighth affirmative defense of Good Faith.

14 9. Plaintiff's Motion To Strike The Ninth
15 Affirmative Defense Of Privilege

16 The Court **GRANTS** Plaintiff's Motion to Strike the
17 ninth affirmative defense of Privilege.

18 Here, Defendant's Answer and Counterclaim fails to
19 set forth any facts with respect to this defense of
20 privilege. As such, the Court finds that Defendant's
21 Answer and Counterclaim is "completely devoid of facts
22 or allegations suggesting how the defenses might apply
23 to this case," and therefore fails to give Plaintiff
24 fair notice of this defense. Scott v. Fed. Bond &
25 Collection Serv., Inc., 2011 WL 176846, at *5 (N.D.
26 Cal. Jan. 19, 2011). See Qarbon.com Inc. v. eHelp
27 Corp., 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004).

28 Accordingly, the Court **GRANTS** Plaintiff's Motion to

1 Strike the ninth affirmative defense of Privilege.
2 However, because Defendant may be able to allege
3 additional facts to support this affirmative defense,
4 the Court **STRIKES with 20 days leave to amend**
5 Defendant's ninth affirmative defense of Privilege.

6 10. Plaintiff's Motion To Strike The Tenth
7 Affirmative Defense Of Lack Of Personal
8 Jurisdiction

9 The Court **DENIES** Plaintiff's Motion to Strike the
10 tenth affirmative defense of Lack of Personal
11 Jurisdiction.

12 The Court finds Defendant has met its pleading
13 burden here with respect to this affirmative defense.
14 Specifically, the Answer and Counterclaim set forth
15 sufficient facts regarding the nature of this defense,
16 such as the allegation that Defendant is organized
17 under the laws of Arizona, has its principal place of
18 business in Tucson, Arizona and does its business
19 exclusively in the state of Arizona. [Def.'s Answer and
20 Counterclaim, 2.] As such, the Court finds that
21 Defendant pleads sufficient facts here to withstand
22 this Motion to Strike. See Monster Cable Prods., Inc.
23 v. Avalanche Corp., 2009 WL 650369, at *3 (N.D. Cal.
24 March 11, 2009).

25 Accordingly, the Court **DENIES** Plaintiff's Motion to
26 Strike the tenth affirmative defense of Lack of
27 Personal Jurisdiction.

28 11. Plaintiff's Motion To Strike The Eleventh

1 Affirmative Defense Of No Likelihood Of
2 Confusion

3 The Court **GRANTS** Plaintiff's Motion to Strike the
4 eleventh affirmative defense of No Likelihood of
5 Confusion.

6 "[D]enials of the allegations in the Complaint or
7 allegations that the Plaintiff cannot prove the
8 elements of his claims are not affirmative defenses."
9 Scott., 2011 WL 176846, at *6. Here, this affirmative
10 defense is an allegation that Plaintiff cannot prove an
11 element of its claim for trademark infringement based
12 on the fact that there is allegedly no likelihood of
13 confusion. See 15 U.S.C. § 1114(1). See also Wetzel's
14 Pretzels, LLC v. Johnson, 2011 WL 2533315 (C.D. Cal.
15 June 27, 2011)(noting that likelihood of confusion is a
16 central element for a trademark infringement claim).
17 Therefore, the Court finds that this is an assertion of
18 a defect in Plaintiff's prima facie case and not an
19 affirmative defense.

20 Accordingly, the Court **STRIKES without leave to**
21 **amend** Defendant's eleventh affirmative defense of No
22 Likelihood of Confusion.

23 12. Plaintiff's Motion To Strike The Twelfth
24 Affirmative Defense Of Fair Use

25 The Court **GRANTS** Plaintiff's Motion to Strike the
26 twelfth affirmative defense of Fair Use.

27 Fair use is an defense to trademark infringement,
28 and is defined by the Lanham Act as a "defense when

1 'the use of the ... term, or device charged to be an
2 infringement is a use, otherwise than as a mark, ... of
3 a term or device which is descriptive of and used
4 fairly and in good faith only to describe the
5 [defendant's] goods or services[.]'" Bell v. Harley
6 Davidson Motor Co., 539 F. Supp. 2d 1249, 1256 (S.D.
7 Cal. 2008)(quoting 15 U.S.C. § 1115(b)(4)). "The
8 precise elements of the classic fair use defense are
9 that the defendant (1) is not using the term as a
10 trademark, (2) uses the term only to describe its goods
11 and services, and (3) uses the term fairly and in good
12 faith." Bell, 539 F. Supp. 2d at 1257.

13 The Court finds that Defendant fails to set forth
14 sufficient facts to put Plaintiff on fair notice of
15 this defense of fair use. Specifically, the Answer and
16 Counterclaim fails to set forth facts regarding the
17 collective elements of this defense and how it applies
18 to this instant Action. Monster Cable Prods., Inc.,
19 2009 WL 650369, at *1 (N.D. Cal. March 11, 2009).

20 Accordingly, the Court **GRANTS** Plaintiff's Motion to
21 Strike the twelfth affirmative defense of Fair Use.
22 However, because Defendant may be able to allege
23 additional facts to support this affirmative defense,
24 the Court **STRIKES with 20 days leave to amend**
25 Defendant's twelfth affirmative defense of Fair Use.

26 13. Plaintiff's Motion To Strike The
27 Thirteenth Affirmative Defense Of
28 Acquiescence

1 The Court **GRANTS** Plaintiff's Motion to Strike the
2 thirteenth affirmative defense of Acquiescence.

3 "An infringement action may be barred by the
4 doctrine of estoppel by acquiescence where the owner of
5 the trademark, by conveying to the defendant through
6 affirmative word or deed, expressly or impliedly
7 consents to the infringement." Sara Lee Corp. v.
8 Kayser-Roth Corp., 81 F.3d 455, 463 (4th Cir. 1996).
9 This defense implies active consent to an infringing
10 use of the mark.

11 Here, Defendant's Answer and Counterclaim fails to
12 set forth any facts concerning how Plaintiff's actions
13 gave rise to this defense of acquiescence. As such,
14 the Court finds that this affirmative defense is
15 conclusory and fails to give Plaintiff fair notice. See
16 Schechter v. Comptroller, 79 F.3d 265, 270 (2d Cir.
17 1996).

18 Accordingly, the Court **GRANTS** Plaintiff's Motion to
19 Strike the thirteenth affirmative defense of
20 Acquiescence. However, because Defendant may be able
21 to allege additional facts to support this affirmative
22 defense, the Court **STRIKES with 20 days leave to amend**
23 Defendant's thirteenth affirmative defense of
24 Acquiescence.

25 14. Plaintiff's Motion To Strike The
26 Fourteenth Affirmative Defense Of Innocent
27 Intent

28 The Court **DENIES** Plaintiff's Motion to Strike the

1 fourteenth affirmative defense of Innocent Intent.

2 Defendant appears to be asserting here the
3 affirmative defense of "innocent use." 15 U.S.C. §
4 1115(b)(5) sets forth that innocent use is a defense to
5 trademark infringement when the party charged with
6 infringement continuously used the mark "without
7 knowledge of the registrant's prior use" from a date
8 prior to (A) the date of constructive use of the mark
9 ... , (B) the registration of the mark ... , or (C)
10 publication of the registered mark." 15 U.S.C. §
11 1115(b)(5).

12 Here, Defendant alleges in its Answer and
13 Counterclaim that it used the mark "Desert European
14 Motorcars," without knowledge of Plaintiff's use of the
15 mark, prior to the date of Plaintiff's registration of
16 the mark. As such, the Court finds that Defendant has
17 set forth sufficient facts to survive this Motion to
18 Strike, as Plaintiff is on fair notice of the nature of
19 this defense based on the allegations in the Answer and
20 Counterclaim. See Monster Cable Prods., Inc., 2009 WL
21 650369, at *3.

22 Accordingly, the Court **DENIES** Plaintiff's Motion to
23 Strike the fourteenth affirmative defense of Innocent
24 Intent.

25 15. Plaintiff's Motion To Strike The Fifteenth
26 Affirmative Defense Of Descriptive

27 The Court **GRANTS** Plaintiff's Motion to Strike the
28 fifteenth affirmative defense of Descriptive.

1 “The Supreme Court has held that a trademark deemed
2 incontestable under the terms of the Lanham Act cannot
3 be challenged on the ground that the trademark is
4 merely descriptive.” Regal Industs., Inc. v. Genal
5 Strap, Inc., 1993 WL 149983, at *1 (E.D. Pa. May 10,
6 1993)(citing Park ‘N Fly, Inc. v. Dollar Park & Fly,
7 Inc., 469 U.S. 189, 201 (1985)). However, an
8 allegation that a trademark is not descriptive has been
9 found to be relevant in determinating whether there is
10 likelihood of confusion. See Munters Corp. v. Matsui
11 Amer., Inc., 909 F.2d 250, 252 (7th Cir. 1990).

12 The Court finds Defendant has failed to meet its
13 pleading burden with respect to this affirmative
14 defense. Specifically, the Answer and Counterclaim
15 contain no facts “suggesting how the defenses might
16 apply to this case,” and therefore fails to give
17 Plaintiff fair notice of this defense. Scott v. Fed.
18 Bond & Collection Serv., Inc., 2011 WL 176846, at *5
19 (N.D. Cal. Jan. 19, 2011).

20 As such, the Court **GRANTS** Plaintiff’s Motion to
21 Strike the fifteenth affirmative defense for
22 Descriptive. However, because Defendant may be able to
23 allege additional facts to support this affirmative
24 defense, the Court **STRIKES with 20 days leave to amend**
25 Defendant’s fifteenth affirmative defense of
26 Descriptive.

27 16. Plaintiff’s Motion To Strike The Sixteenth
28 Affirmative Defense Of Fraud

1 The Court **GRANTS** Plaintiff's Motion to Strike the
2 sixteenth affirmative defense of Fraud.

3 Pursuant to Federal Rule of Civil Procedure 9(b),
4 Defendant must state with particularity the
5 circumstances constituting the alleged fraud. Fed. R.
6 Civ. P. 9(b). See Operating Eng's Pension Trust Fund
7 v. Fire Rock Prods. Co., 2010 WL 2635782, at *4 (N.D.
8 Cal. June 30, 2010)(noting that defendant must plead
9 the affirmative defense of fraud with particularity).
10 Allegations of fraud must be specific enough to give
11 "defendants notice of the particular misconduct which
12 is alleged to constitute the fraud charged so that they
13 can defend against the charge and not just deny that
14 they have done anything wrong." Bly-Magee v.
15 California, 236 F.3d 1014, 1019 (9th Cir. 2001).

16 The Court finds that Defendant fails to state with
17 particularity the circumstances surrounding the alleged
18 fraud here. Defendant's sixteenth affirmative defense
19 alleges only that Defendant is "informed and believes
20 and thereon alleges that the claims found within the
21 FAC are barred by Plaintiff's fraud." [Def.'s Answer
22 and Counterclaim, 9.] Therefore, Defendant "simply
23 states a legal conclusion or theory without the support
24 of facts explaining how it connects to the instant
25 case." Pepsico, Inc. v. J.K. Distributions, Inc., 2007 WL
26 2852647, at *2 (C.D. Cal. Sept. 14, 2007). As such,
27 the Court finds Defendant has failed to meet the
28 heightened pleading requirement set forth under Federal

1 Rule of Civil Procedure 9(b).

2 Accordingly, the Court **GRANTS** Plaintiff's Motion to
3 Strike the sixteenth affirmative defense of Fraud.

4 However, because Defendant may be able to allege
5 additional facts to support this affirmative defense,
6 the Court **STRIKES with 20 days leave to amend**
7 Defendant's sixteenth affirmative defense of Fraud.

8 17. Plaintiff's Motion To Strike The
9 Seventeenth Affirmative Defense Of
10 Trademark Misuse

11 The Court **GRANTS** Plaintiff's Motion to Strike the
12 seventeenth affirmative defense of Trademark Misuse.

13 The Court finds that this affirmative defense is
14 duplicative and unnecessary, as Defendant has already
15 pled the affirmative defense of unclean hands.
16 Specifically, trademark misuse concerns the alleged
17 misconduct of the plaintiff with regard to its
18 trademark, and as such, like the defense of unclean
19 hands, this defense is based on Plaintiff's alleged
20 past misconduct and asserts that Plaintiff is therefore
21 prevented from bringing this present Action based on
22 this past misconduct.¹ See Waco-Porter Corp. v. Tubular

23

24

25 ¹ The Court also notes that the defense of trademark misuse
26 itself had a fragmented history and may not even exist as its own
27 separate defense. See, e.g., Juno Online Servs., L.P. v. Juno
28 Lighting, Inc., 979 F.Supp. 684, 687-91 (N.D. Ill. 1997)(noting
that because the "plaintiff has failed to point the court to a
single case in which an American court has used trademark misuse
affirmatively, the court is quite skeptical to allow an
affirmative claim for trademark misuse").

1 Structures Corp. of Am., 222 F.Supp. 332 (S.D. Cal.
2 1963). See Kema, Inc. v. Koperwhats, 2010 WL 3464708,
3 at *9 (N.D. Cal. Sept. 1, 2010)(finding defendant's
4 affirmative defense of trademark misuse duplicative
5 because defendant had also plead the defense of unclean
6 hands). As such, the Court finds this affirmative
7 defense is duplicative and unnecessary and should
8 therefore be stricken. Fed. R. Civ. P. 12(f).

9 Accordingly, the Court **STRIKES without leave to**
10 **amend** Defendant's seventeenth affirmative defense of
11 Trademark Misuse.

12 18. Plaintiff's Motion To Strike The
13 Eighteenth Affirmative Defense Of
14 Invalidity of Trademark

15 The Court **GRANTS** Plaintiff's Motion to Strike the
16 eighteenth affirmative defense of Invalidity of
17 Trademark.

18 The Court finds that Defendant has failed to plead
19 sufficient facts regarding this affirmative defense of
20 invalidity of the mark. The Answer and Counterclaim
21 fails to allege facts regarding the basis of the
22 allegedly invalidity of the marks here, as the
23 affirmative defense only pleads that "the claims are
24 barred by the invalidity of Plaintiff's purported
25 marks." [Def.'s Answer and Counterclaim, 10.] As such,
26 the Court finds that this defense is a mere legal
27 conclusion without supporting facts linking this theory
28 to the Case at bar, and therefore fails to put

1 Plaintiff on fair notice of the basis of this defense.
2 Pepsico, Inc., 2007 WL 2852647, at *2.

3 Accordingly, the Court **GRANTS** Plaintiff's Motion to
4 Strike the eighteenth affirmative defense of Invalidity
5 of Trademark. However, because Defendant may be able
6 to allege additional facts to support this affirmative
7 defense,² the Court **STRIKES with 20 days leave to amend**
8 Defendant's eighteenth affirmative defense of
9 Invalidity of Trademark.

10 19. Plaintiff's Motion To Strike The
11 Nineteenth Affirmative Defense Of Remedies
12 At Law Are Adequate

13 The Court **GRANTS** Plaintiff's Motion to Strike the
14 nineteenth affirmative defense of Remedies At Law Are
15 Adequate.

16 The Court finds that Defendant fails to set forth
17 any facts with respect to the nature or basis of
18 defense. As such, the Court finds that Defendant's
19 Answer and Counterclaim is "completely devoid of facts
20 or allegations suggesting how the defenses might apply

21
22 ² While Plaintiff argues that the alleged invalidity of
23 trademark should instead be asserted as a counterclaim, the Court
24 finds that invalidity of trademark can constitute an affirmative
25 defense, as long as Defendant pleads sufficient facts regarding
26 the basis for the invalidity of the marks. See, e.g., Mag
27 Instrument, Inc. v. JS Prods., Inc., 595 F. Supp. 2d 1102 (C.D.
28 Cal. 2008)(discussing the defendant's affirmative defense of
invalidity of the trademark); Computerland Corp. v. Microland
Computer Corp., 586 F. Supp. 22 (N.D. Cal. 1984)(noting that
"invalidity or unprotectability of a registered trademark is
effectively an affirmative defense to claims of infringement,
unfair source designation and other allegations of unfair
competition").

1 to this case," and therefore fails to give Plaintiff
2 fair notice of this defense. Scott v. Fed. Bond &
3 Collection Serv., Inc., 2011 WL 176846, at *5 (N.D.
4 Cal. Jan. 19, 2011). See J & J Sports Prods., Inc. v.
5 Jimenez, 2010 WL 5173717, at *2 (S.D. Cal. Dec. 15,
6 2010)(granting plaintiff's motion to strike the
7 affirmative defense of "adequate remedy at law" because
8 it was a mere boilerplate recitation).

9 Accordingly, the Court **GRANTS** Plaintiff's Motion to
10 Strike the nineteenth affirmative defense of Remedies
11 At Law Are Adequate. However, because Defendant may be
12 able to allege additional facts to support this
13 affirmative defense, the Court **STRIKES with 20 days**
14 **leave to amend** Defendant's nineteenth affirmative
15 defense of Remedies At Law Are Adequate.

16 20. Plaintiff's Motion To Strike The Twentieth
17 Affirmative Defense Of No Irreparable Harm

18 The Court **GRANTS** Plaintiff's Motion to Strike the
19 twentieth affirmative defense of No Irreparable Harm.

20 The Court finds that, similar to the nineteenth
21 affirmative defense, Defendant's Answer and
22 Counterclaim fails to set forth any facts with respect
23 to the affirmative defense of No Irreparable Harm.
24 Therefore, the Court finds that Defendant has failed to
25 meet its pleading burden here, as "[b]ased on the
26 pleadings, Plaintiff cannot know the intent or nature
27 of the affirmative defenses pleaded." J & J Sports
28 Prods., Inc., 2010 WL 5173717, at *2.

1 Accordingly, the Court **GRANTS** Plaintiff's Motion to
2 Strike the twentieth affirmative defense of No
3 Irreparable Harm. However, because Defendant may be
4 able to allege additional facts to support this
5 affirmative defense, the Court **STRIKES with 20 days**
6 **leave to amend** Defendant's twentieth affirmative
7 defense of No Irreparable Harm.

8 21. Plaintiff's Motion To Strike The Twenty-
9 First Affirmative Defense Of Not
10 Distinctive And Has Not Acquired Secondary
11 Meaning

12 The Court **DENIES** Plaintiff's Motion to Strike the
13 twenty-first affirmative defense of Not Distinctive And
14 Has Not Acquired Secondary Meaning.

15 A plaintiff in a trademark infringement claim has
16 the burden to prove that the mark is "distinctive."
17 Kendall-Jackson Winery v. E. & J. Gallo Winery, 150
18 F.3d 1042, 1046-47 (9th Cir. 1998). A mark or product
19 is distinctive upon a showing that it has acquired a
20 secondary meaning. Wal-Mart Stores, Inc. v. Samara
21 Bros., Inc., 529 U.S. 205, 216, (2000).

22 Here, Defendant alleges that "Plaintiff's trademark
23 claims based on Plaintiff's purported [mark] is barred
24 because the mark is not distinctive and has not
25 acquired secondary meaning." [Def.'s Answer and
26 Counterclaim, 10.] The Court finds that Defendant has
27 sufficiently plead this defense here, as Defendant sets
28 forth the claims to which this affirmative defense

1 applies, as well as the nature of this defense. See
2 Monster Cable Prods, Inc. v. Avalanche Corp., 2009 WL
3 650369, *1 (N.D. Cal. March 11, 2009)(finding that the
4 plaintiff had provided fair notice of the affirmative
5 defense of lack of required distinctiveness when the
6 defendant had alleged that the marks were
7 "insufficiently distinctive").

8 Accordingly, the Court **DENIES** Plaintiff's Motion to
9 Strike the twenty-first affirmative defense of Not
10 Descriptive and Has Not Acquired Secondary Meaning.

11 22. Plaintiff's Motion To Strike The Twenty-
12 Second Affirmative Defense Of Claims
13 Barred Under 15 U.S.C. § 1115

14 The Court **GRANTS** Plaintiff's Motion to Strike the
15 twenty-second affirmative defense of Claims Barred
16 Under 15 U.S.C. § 1115.

17 Once incontestability of a mark has been
18 established, "only those eight defenses enumerated in
19 [section] 1115(b) can be interposed in an action for
20 trademark infringement." Protech Diamond Tools, Inc. v.
21 Liao, 2009 WL 1626587 (N.D. Cal. June 8, 2009).

22 The Court finds that Defendant fails to provide
23 Plaintiff with fair notice as to how 15 U.S.C. § 1115
24 bars Plaintiff's claims here. Pepsico, 2007 WL 2852647,
25 at *2. Specifically, eight defenses are enumerated
26 under Section 1115(b), but the Answer and Counterclaim
27 fails to set forth facts or allegations here regarding
28 the specific defense or defenses under Section 1115(b)

1 that bar Plaintiff's claims in this Action. Therefore,
2 the Court finds that Defendant has not met his pleading
3 burden here with respect to this affirmative defense,
4 as Plaintiff does not have fair notice of how the
5 claims in this Action are barred by this statute.

6 Accordingly, the Court **GRANTS** Plaintiff's Motion to
7 Strike the twenty-second affirmative defense of Claims
8 Barred Under 15 U.S.C. § 1115. However, because
9 Defendant may be able to allege additional facts to
10 support this affirmative defense, the Court **STRIKES**
11 **with 20 days leave to amend** Defendant's twenty-second
12 affirmative defense of 15 U.S.C. § 1115.

13 23. Plaintiff's Motion To Strike The Twenty-
14 Third Affirmative Defense Of Improper
15 Venue

16 The Court **DENIES** Plaintiff's Motion to Strike the
17 twenty-third affirmative defense of Improper Venue.

18 The Court finds Defendant has met its pleading
19 burden here with respect to this affirmative defense of
20 Improper Venue. Specifically, the Answer and
21 Counterclaim set forth sufficient facts regarding the
22 nature of this defense, such as the fact that Defendant
23 is organized under the laws of Arizona and has its
24 principal place of business in Tucson, Arizona. [Def.'s
25 Answer and Counterclaim, 2.] Moreover, the Answer and
26 Counterclaim allege that Defendant does not conduct
27 business in the state of California, and but instead
28 conducts business exclusively in the state of Arizona.

1 [Id.] As such, the Court finds that Defendant pleads
2 sufficient facts here to withstand this Motion to
3 Strike, as Plaintiff has fair notice of the asserted
4 defense. See Monster Cable Prods., Inc., 2009 WL
5 650369, at *3.

6 Accordingly, the Court **DENIES** Plaintiff's Motion to
7 Strike the twenty-third affirmative defense of Improper
8 Venue.

9 24. Plaintiff's Motion To Strike The Twenty-
10 Fourth Affirmative Defense of Common Law
11 Good Faith Junior User

12 The Court **DENIES** Plaintiff's Motion to Strike the
13 twenty-fourth affirmative defense of Common Law Good
14 Faith Junior User.

15 "Under the Tea Rose-Rectanus doctrine, priority of
16 use of a mark in one area of the United States does not
17 give rights to prevent its use by a good faith and
18 innocent user in a remote geographic area." Grupo
19 Gigante S.A. de C.V. v. Dallo & Co., Inc., 119 F. Supp.
20 2d 1083, 1090 (C.D. Cal. 2000), *vacated and remanded on*
21 *other grounds*, 391 F.3d 1088 (9th Cir. 2004). This
22 common law doctrine "provides for a defense for a
23 junior user if that user proves that (1) its first use
24 was in good faith and (2) its first use was in a remote
25 area." Wood v. Apodaca, 375 F. Supp. 2d 942, 948 (N.D.
26 Cal. 2005). "A 'remote' territory is one where, at the
27 critical date of the junior user's first use, the
28 senior user's mark was not known by customers in that

1 territory, such that no one would have been confused as
2 to the source." Hispanic Broad. Corp. v. Educ. Media
3 Found., 2003 WL 22867633, at *6 (C.D. Cal. Oct. 30,
4 2003)(quotation omitted).

5 Here, Defendant alleges in its Answer and
6 Counterclaim that it began using the mark "Desert
7 European Motorcars" in or about March 2006, without any
8 knowledge or notice of Plaintiff's use, and that it
9 sells exclusive in Tucson, Arizona, 350 miles away from
10 where Plaintiff runs its car dealership in Rancho
11 Mirage, California. [Def.'s Answer and Counterclaim,
12 12.] As such, the Court finds that Defendant has pled
13 sufficient facts here to withstand this Motion to
14 Strike, as Plaintiff has fair notice of this asserted
15 defense. See Monster Cable Prods., Inc., 2009 WL
16 650369, at *3.

17 Accordingly, the Court **DENIES** Plaintiff's Motion to
18 Strike the twenty-fourth affirmative defense of Common
19 Law Good Faith Junior User.

20 25. Plaintiff's Motion To Strike The Twenty-
21 Fifth Affirmative Defense Of Claims Barred
22 Under 15 U.S.C. § 1057

23 The Court **GRANTS** Plaintiff's Motion to Strike the
24 twenty-fifth affirmative defense of Claims Barred Under
25 15 U.S.C. § 1057.

26 15 U.S.C. § 1057 sets forth that, contingent on the
27 registration of a mark on the Principal Register, the
28 filing of the application to register such mark shall

1 constitute constructive use of the mark, conferring a
2 right of priority except against any person whose mark
3 has not been abandoned and who, prior to the
4 application, has either used or filed an application
5 themselves. 15 U.S.C. § 1057(c)

6 Here, Defendant asserts the defense that it was not
7 on constructive notice of Plaintiff's trademark because
8 of its prior use of the mark in question. However, the
9 Answer already contains language alleging that
10 Defendant was not on constructive notice based on its
11 prior use. Moreover, as Section 1057 only lays out a
12 definition of constructive use, it is therefore not a
13 proper affirmative defense in and of itself.

14 Therefore, the Court finds this affirmative defense
15 both redundant and improper. Fed. R. Civ. P. 12(f).

16 Accordingly, the Court **STRIKES without leave to**
17 **amend** Defendant's twenty-fifth affirmative defense of
18 Claims Barred Under 15 U.S.C. § 1057.

19 26. Plaintiff's Motion To Strike The Twenty-
20 Sixth Affirmative Defense Of Concurrent
21 Use

22 The Court **DENIES** Plaintiff's Motion to Strike the
23 twenty-sixth affirmative defense of Concurrent Use.

24 The Lanham Act "allows the concurrent registration
25 and use of the same or similar trademarks in commerce
26 where a court of competent jurisdiction determines that
27 such use is appropriate or where 'confusion, mistake or
28 deception is not likely to result from the continued

1 use by more than one person of the same or similar
2 marks under conditions and limitations as to the mode
3 or place of use of the marks or the goods in connection
4 with which the marks are used,' provided they become
5 'entitled to use such marks as a result of the
6 concurrent lawful use in commerce prior to ... the
7 date[] of any registration under' the Act." GTE Corp.
8 v. Williams, 649 F. Supp. 164, 167 n. 3 (D. Utah 1986).
9 A party may seek concurrent use registration based on a
10 court determination of concurrent use rights. 37 C.F.R.
11 § 2.99(f)(1).

12 The Court finds that Defendant has sufficiently
13 pled this affirmative defense of concurrent use.
14 Specifically, Defendant sets forth in its Answer and
15 Counterclaim that its date of first use was prior to
16 the filing date of Plaintiff's registration and that
17 both Parties were using the mark in commerce, alleging
18 Defendant uses the mark "Desert European Motorcars"
19 exclusively in Tucson while Plaintiff instead uses the
20 mark in California. See BellSouth Corp. v. DataNational
21 Corp., 60 F.3d 1565, 1571 (Fed. Cir. 1995). As such,
22 the Court finds that Defendant has pled sufficient
23 facts here to put Plaintiff on fair notice regarding
24 this defense.

25 Accordingly, the Court **DENIES** Plaintiff's Motion to
26 Strike the twenty-sixth affirmative defense of
27 Concurrent Use.

28 27. Plaintiff's Motion To Strike The Twenty-

1 Seventh Affirmative Defense Of Claims
2 Barred Under 15 U.S.C. § 1067

3 The Court **GRANTS** Plaintiff's Motion to Strike the
4 twenty-seventh affirmative defense of Claims Barred
5 Under 15 U.S.C. § 1067.

6 15 U.S.C. § 1067 sets forth the procedure for
7 filing an opposition to registration, an application to
8 register as a lawful concurrent user or for an
9 application to cancel the registration of a mark. 15
10 U.S.C. § 1067. As such, the Court finds that
11 Defendant's affirmative defense here is improper, as
12 the statute merely sets forth filing procedures and
13 fails to give rise to an affirmative defense. See Sec.
14 People, Inc. v. Classic Woodworking, LLC, 2005 WL
15 645592, *2 (N.D. Cal. March 4, 2005).

16 Accordingly, the Court **STRIKES without leave to**
17 **amend** Defendant's twenty-seventh affirmative defense of
18 Claims Barred Under 15 U.S.C. § 1067.

19 28. Plaintiff's Motion To Strike The Twenty-
20 Eighth Affirmative Defense Of Claims
21 Barred Under 15 U.S.C. § 1069

22 The Court **GRANTS** Plaintiff's Motion to Strike the
23 twenty-eighth affirmative defense of Claims Barred
24 Under 15 U.S.C. § 1069.

25 15 U.S.C. § 1069 sets forth that "[i]n all inter
26 partes proceedings equitable principles of laches,
27 estoppel, and acquiescence, where applicable may be
28 considered and applied." 15 U.S.C. § 1069. However, in

1 its Answer and Counterclaim, Defendant has pled the
2 affirmative defenses of laches, estoppel and
3 acquiescence. As such, the Court finds that this
4 affirmative defense is duplicative and redundant. Fed.
5 R. Civ. P. 12(f).

6 Accordingly, the Court **STRIKES without leave to**
7 **amend** Defendant's twenty-eighth affirmative defense of
8 Claims Barred Under 15 U.S.C. § 1069.

9 **C. Plaintiff's Motion To Strike Portions Of Answer**
10 **And Counterclaim**

11 Plaintiff also moves to strike portions of the
12 Answer and Counterclaim pursuant to Federal Rule of
13 Civil Procedure 12(f).

14 1. Plaintiff's Motion To Strike Defendant's
15 Allegation Regarding Constructive Notice

16 Plaintiff first moves to strike the phrase in the
17 Answer and Counterclaim that Defendant "expressly
18 denies that [Defendant] was on ... constructive notice
19 that Plaintiff had registered with the United States
20 Patent and Trademark Office and was so protected."

21 [Def.'s Answer and Counterclaim, at 3:11-13.]

22 Plaintiff argues that this allegation should be
23 stricken because it is wrong as a matter of law, given 15
24 U.S.C. § 1072 of the Lanham Act provides that
25 Registration of a mark constitutes constructive notice
26 of the Plaintiff's claim of ownership.

27 The Court **DENIES** Plaintiff's Motion to Strike
28 Defendant's allegation regarding constructive notice.

1 15 U.S.C. § 1072 sets forth that "the filing of the
2 application to register such mark shall constitute
3 constructive use of the mark." 15 U.S.C. § 1072.
4 However, 15 U.S.C. § 1057(c) also sets forth that the
5 filing of this application will not constitute
6 constructive notice against a person whose mark has not
7 been abandoned and who, prior to the filing of such
8 application, used the mark, filed an application to
9 register the mark, or has filed a foreign application
10 to register the mark and timely files an application to
11 register the mark. 15 U.S.C. § 1057(c).

12 Defendant alleges in its Answer and Counterclaim
13 that it used the mark prior to Plaintiff's filing of
14 its trademark application, and therefore asserts it was
15 not on constructive notice of the mark here. As such,
16 the Court finds that Plaintiff fails to establish that
17 this phrase is insufficient as a matter of law, as
18 Defendant has pled sufficient facts here regarding its
19 allegation that it was not on constructive notice of
20 Plaintiff's registration of the mark.

21 Accordingly, the Court **DENIES** Plaintiff's Motion to
22 Strike with regard to this phrase regarding
23 constructive notice.

24 2. Plaintiff's Motion To Strike Defendant's
25 Request For Attorney's Fees

26 Plaintiff next moves to strike the two phrases
27 contained in the Answer and Counterclaim setting forth
28 that Defendant is seeking attorneys fees in this

1 Action.³

2 The Court **GRANTS** Plaintiff's Motion to Strike
3 Defendant's prayer for attorney's fees here.

4 The Lanham Act provides that "[t]he court in
5 exceptional cases may award reasonable attorney fees to
6 the prevailing party." 15 U.S.C. § 1117(a). A
7 trademark infringement case is exceptional when the
8 record supports a finding that the defendant's
9 infringement was malicious, fraudulent, willful, or
10 deliberate. See Derek Andrew, Inc. v. Poof Apparel
11 Corp., 528 F.3d 696, 702 (9th Cir. 2008). However,
12 when the defendant seeks attorney's fees, the Ninth
13 Circuit has held that an award of attorney's fees is
14 warranted if the defendant can show that the trademark
15 infringement action was "either groundless,
16 unreasonable, vexatious, or pursued in bad faith."
17 Cairns v. Franklin Mint Co., 292 F.3d 1139, 1156 (9th
18 Cir. 2002) (internal citations omitted).

19 The Court finds that Defendant has failed to
20 sufficient plead its prayer for attorneys fees.
21 Specifically, the Answer and Counterclaim fails to
22 allege that this is an exceptional case here, nor does
23 it allege any facts regarding the groundless,
24 unreasonable, or vexatious nature of this Action. See

25
26 ³ Specifically, Plaintiff seeks to strike the phrase that
27 it is seeking "attorneys fees" on page 11, line 18 of the Answer
28 and Counterclaim, and "reasonable attorney's fees pursuant to the
provisions of any applicable statute or law" on page 14, line 14.

1 id. As such, the Court finds that Defendant fails to
2 put Plaintiff on fair notice of the facts underlying
3 this request for attorney's fees such as to defend
4 against the charge.

5 Accordingly, the Court **GRANTS** Plaintiff's Motion to
6 Strike and **STRIKES with 20 days leave to amend**
7 Defendant's prayer for attorney's fees.

8 3. Plaintiff's Motion To Strike Defendant's
9 Phrase Regarding Its Intention To File A
10 Petition To Cancel Plaintiff's Trademark

11 Plaintiff moves to strike the phrase in the Answer
12 and Counterclaim setting forth that Defendant intends
13 to file a petition to cancel Plaintiff's trademark, or
14 in the alternative, a petition to concurrently use the
15 term "Desert European Motorcars." [Def.'s Answer and
16 Counterclaim, at 13:6-8.] Plaintiff argues that this
17 phrase is now immaterial, as Defendant's petition to
18 cancel Plaintiff's trademark has now been stayed
19 pending the outcome in this present Action. [Pl.'s
20 Request for Judicial Notice, Ex. 1.]

21 The Court **GRANTS** Plaintiff's Motion to Strike the
22 phrase at issue here.

23 The Court finds that this phrase regarding
24 Defendant's intent of filing a petition to cancel
25 Plaintiff's trademark is immaterial here.
26 Specifically, while Defendant has filed its petition to
27 cancel Plaintiff's trademark, this petition has been
28 stayed pending the outcome of this present Action.

1 Therefore, the Trademark Trial and Appeal Board will
2 not rule on Defendant's petition prior to the
3 resolution of the rights of the Parties in this instant
4 Action. [Pl.'s Request for Judicial Notice, Ex. 1.]

5 As such, the Court **GRANTS** Plaintiff's Motion to
6 Strike and **STRIKES with 20 days leave to amend** the
7 phrase in the Answer and Counterclaim regarding
8 Defendant's intention of filing a petition to cancel
9 Plaintiff's trademark, or in the alternative, to
10 concurrently use the term "Desert European Motorcars."

11 4. Plaintiff's Motion To Strike Defendant's
12 Request For An Injunction

13 Plaintiff finally moves to strike Defendant's
14 phrase in the Answer and Counterclaim setting forth
15 that Defendant is seeking "preliminary and permanent
16 injunctive relief restraining and enjoining [Plaintiff]
17 from attempting to enforce an injunction against, or
18 otherwise prevent [Defendant] from using the term
19 "Desert European Motorcars." [Def's Answer and
20 Counterclaim, 14:11-15.]

21 The Court **GRANTS** Plaintiff's Motion to Strike this
22 request for injunctive relief. The Court finds that
23 this request is improper, as Defendant effectively
24 requests that the Court issue an injunction that
25 prevents Plaintiff from enforcing its own injunction.

26 Accordingly, the Court **GRANTS** Plaintiff's Motion
27 and **STRIKES with 20 days leave to amend** this request
28 for injunctive relief.

