

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUISIANA PACIFIC CORPORATION,)	Case No. C-12-3433 SC
)	
Plaintiff,)	ORDER GRANTING MOTION TO
)	<u>DISMISS</u>
v.)	
)	
JAMES HARDIE BUILDING PRODUCTS,)	
INC., and DOES 1-5, inclusive)	
)	
Defendants.)	
)	
)	

Plaintiff Louisiana Pacific Corporation ("Plaintiff") brings this action against Defendant James Hardie Building Products ("Defendant") for, among other things, trademark infringement and tortious interference with economic advantage. ECF No. 1 ("Compl."). The gravamen of the Complaint is that Defendant injured Plaintiff and infringed its registered trademarks by paying Google, an internet search engine, to direct consumers to Defendant's website when consumers performed an internet search using Plaintiff's marks.

Defendant now moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that Plaintiff has failed to identify all of the trademarks that were allegedly infringed. ECF No. 14 ("MTD"). In the alternative, Defendant moves for a more definite statement with respect to allegedly infringed marks

1 pursuant to Federal Rule of Civil Procedure 12(e). Defendant also
2 moves to dismiss Plaintiff's claim for tortious interference on the
3 ground Plaintiff has not alleged the existence of an economic
4 relationship between itself and its prospective clients. The
5 motion is fully briefed, ECF Nos. 20 ("Opp'n"), 21 ("Reply"), and
6 appropriate for determination without oral argument, Civ. L.R. 7-
7 1(b).

8 The Court finds that the Complaint lacks the requisite
9 specificity since it does not identify every trademark which was
10 allegedly infringed. In its opposition papers, Plaintiff argues
11 that it need not "describe every potential . . . infringement of
12 protected material." Opp'n at 5. This may be true, but it misses
13 the point of Defendant's motion. Defendant is not arguing that
14 Plaintiff is required to describe every instance of alleged
15 infringement. Rather, Defendant is arguing that Plaintiff should
16 identify every trademark which was allegedly infringed. See MTD at
17 5. This is not an overly burdensome requirement and is necessary
18 to provide Defendant with adequate notice. Plaintiff's authority
19 does not suggest that the Court should impose a lower standard.¹
20 As pled, the Complaint identifies only three of the allegedly
21 infringed marks and leaves Defendant to guess at the others. This
22 is insufficient.

23 Defendant also argues that Plaintiff's claim for tortious
24 interference with economic advantage fails because Plaintiff has

25 _____
26 ¹ See Perfect 10, Inc. v. Cybernet Ventures, Inc., 167 F. Supp. 2d
27 1114, 1121 (C.D. Cal. 2001) (claim for copyright infringement
28 sufficiently pled where complaint identified the relevant
copyrights); Facebook, Inc. v. Power Ventures, Inc., C 08-5780 JF
(RS), 2009 WL 1299698, at *5 (N.D. Cal. May 11, 2009) (claim for
trademark infringement sufficiently pled where complaint identified
the allegedly infringed mark).

1 not pled facts sufficient to establish that it has an existing
2 relationship with the visitors to its website. Under California
3 law, "[a]n essential element of the tort of interference with
4 prospective business advantage is the existence of a business
5 relationship with which the tortfeasor interfered. Although this
6 need not be a contractual relationship, an existing relationship is
7 required." Roth v. Rhodes, 25 Cal. App. 4th 530, 546 (Cal. Ct.
8 App. 1994) (internal citations omitted). "Allegations that amount
9 to a mere 'hope for an economic relationship and a desire for
10 future benefit' are inadequate to satisfy the pleading requirements
11 of th[is] element of the tort." Google Inc. v. Am. Blind &
12 Wallpaper Factory, Inc., C 03-05340 JF, 2005 WL 832398, at *8 (N.D.
13 Cal. Mar. 30, 2005) (quoting Blank v. Kirwan, 39 Cal.3d 311, 331
14 (Cal. 1985)).

15 Plaintiff alleges it "has an economic relationship with
16 consumers who visit its website to purchase goods and services and
17 there exists a corresponding probability that those consumers will
18 confer a future economic benefit to [Plaintiff]." Compl. ¶ 98.
19 Defendant argues that "such unidentified consumers have no existing
20 relationship with Plaintiff." MTD at 7. Plaintiff responds that
21 it should not be required to identify these consumers because
22 Defendant has sole possession of their names. Opp'n at 8.
23 Plaintiff contends that Google's search program allows Defendant to
24 specifically identify Internet users who clicked on a particular
25 link and were later converted into customers who eventually
26 purchased goods associated with that link. Id.

27 Plaintiff's argument lacks merit as it is premised on the
28 unfounded assumption that a person forms a business relationship

1 with Plaintiff when he or she enters particular terms in Google's
2 search engine. There is a possibility that consumers who search
3 for Plaintiff through Google will choose to purchase Plaintiff's
4 goods or services at some point in the future; however, such
5 consumers do not have an existing business relationship with
6 Plaintiff merely because they perform an internet search. In sum,
7 Plaintiff's "alleged expectation of and prospective sales to these
8 customers . . . does not rise to the level of the requisite promise
9 of future economic advantage" necessary to meet the pleading
10 requirements for a claim for tortious interference. Google, 2005
11 WL 832398, at *9 (internal quotations omitted). This is especially
12 true since those allegations encompass "'new' customers with whom
13 [Plaintiff] cannot claim any past or present interactions." Id.

14 For the reasons set forth above, the Court GRANTS Defendant
15 James Hardie Building Products, Inc.'s Motion to Dismiss.
16 Plaintiff Louisiana Pacific Corporation's Complaint is DISMISSED to
17 the extent that it is predicated on Defendant's alleged
18 infringement of unidentified marks. The Court GRANTS Plaintiff
19 thirty days' leave to amend its Complaint to specifically identify
20 each and every mark that Defendant allegedly infringed.
21 Additionally, Plaintiff's claim for tortious interference with a
22 prospective business advantage is DISMISSED WITH PREJUDICE.

23

24 IT IS SO ORDERED.

25

26 Dated: November 14, 2012

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UNITED STATES DISTRICT JUDGE