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8 UNITED STATES DISTRICT COURT

9 Northern District of California

10 San Francisco Division

11 SALESBRAIN, INC., et al., No. C 12-05026 LB
12 v. Plaintiffs, **ORDER DENYING DEFENDANT'S
13 ANGELVISION TECHNOLOGIES, et al., MOTION FOR SANCTIONS**
14 Defendants. [Re: ECF No. 46]

15 _____/ 16 INTRODUCTION

17 SalesBrain, LLC (“SalesBrain”), Patrick Renvoise, and Christophe Morin (collectively,
18 “Plaintiffs”) sued AngelVision Technologies, Inc. (“AngelVision”) and Jeff Otis for claims arising
19 out of a prior business relationship between SalesBrain and AngelVision and actions taken after that
20 relationship ended. *See* First Amended Complaint (“FAC”), ECF No. 10.¹ The court dismissed Mr.
21 Renvoise and Mr. Morin as plaintiffs, and dismissed with prejudice SalesBrain’s claims against Mr.
22 Otis for lack of personal jurisdiction, leaving only SalesBrain and AngelVision as parties to this
23 action. 3/21/2013 Order, ECF No. 41. The court also dismissed without prejudice, among others,
24 SalesBrain’s claim against AngelVision for trademark infringement under the Lanham Act, 15
25 U.S.C. § 1125(a)). *Id.* at 22-25. SalesBrain filed a Second Amended Complaint and re-alleged its
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27 _____/ 28 ¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-
generated page numbers at the top of the document.

1 trademark infringement claim, Second Amended Complaint (“SAC”), ECF No. 44 ¶¶ 33-39, and
2 AngelVision now moves for sanctions against SalesBrain’s counsel for doing so, Motion, ECF No.
3 46 at 15-18. Upon consideration of the papers submitted and the record in this case, the court
4 **DENIES** AngelVision’s motion.²

5 **STATEMENT**

6 As described above, SalesBrain re-alleged its trademark infringement claim in its Second
7 Amended Complaint. SAC, ECF No. 44 ¶¶ 33-39. The court previously dismissed the claim in its
8 3/21/2013 Order, stating as follows:

9 Here, Plaintiffs allege that SalesBrain has used its four neuromarketing principals
10 as a tagline since at least 2003 and therefore have built up goodwill such that it is
11 entitled to trademark protection. *See* FAC, ECF No. 10 ¶¶ 21-23. Plaintiffs also
12 allege that AngelVision, “with at least constructive notice” of SalesBrain’s rights
13 with respect to the tag line, “adopted and used” the tag line in preparing sales and
14 marketing materials to others, and that this use “is likely to cause confusion, mistake,
15 or to deceive as to origin, affiliation, connection, sponsorship, or association of
16 AngelVision with SalesBrain, or as to the origin, sponsorship, or approval of
17 AngelVision’s use of” the tagline by SalesBrain. *Id.* ¶¶ 24, 45. AngelVision argues,
18 in essence, that no one could possibly be confused by its use of SalesBrain’s tagline
19 because it attributed the four neuromarketing principles to SalesBrain. *See*
20 AngelVision Motion, ECF No. 16 at 9-10. Indeed, as noted above, SalesBrain
21 attached to its First Amended Complaint screenshots of AngelVision’s “Coffee with
22 AngelVision” webinar that contain SalesBrain’s four neuromarketing principals. *See id.*, Exh. C. Below the four marketing principals the following is stated: “Source:
23 SalesBrain.” *See id.*

24 Without more, the court is hard-pressed to understand how AngelVision’s
25 inclusion of SalesBrain’s four neuromarketing principals would cause consumer
26 confusion, given that AngelVision clearly attributes them to SalesBrain. And
27 Plaintiffs have not provided anything more. On this point, their opposition brief
28 merely provides basic legal standards for trademark infringement and recites the
trademark infringement-related allegations from its First Amended Complaint.
Opposition to AngelVision Motion, ECF No. 23 at 6-7. Accordingly, Plaintiffs’ fifth
claim for false designation of origin under Section 43(a) of the Lanham Act is
DISMISSED WITHOUT PREJUDICE.

23 3/21/2013 Order, ECF No. 41 at 25.

24 In its Second Amended Complaint, SalesBrain introduced further, more detailed
25 allegations—“something more”—to support its trademark infringement. Specifically, SalesBrain

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27 ² Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for determination
28 without oral argument and vacates the June 20, 2013 hearing.

1 alleges:

2 Continuously since approximately 2002, SalesBrain has used the Mark to identify its
3 services and distinguish them from others, by prominently displaying its Mark in
4 connection with its advertising. As a result of the sales and advertising by SalesBrain
5 under its Mark said Mark has come to indicate to said purchasers a meaning of
6 SalesBrain's services originating only with SalesBrain (or its licensees). As a result
7 of said association by purchasers of the mark with SalesBrain, Angel vision's use of
8 the Mark and in some cases, SalesBrain's name, has caused and is likely to continue
9 to cause confusion by said purchasers.

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14 SAC, ECF No. 44 ¶ 35. SalesBrain also alleges that “[its] customers or potential customers have
15 been confused by AngelVision’s advertising believing [it] is connected with AngelVision and/or has
16 approved or sponsored AngelVision’s use of its Mark” and that “[its] customers or potential
17 customers believe or are likely to believe the two companies use the same Neuromarketing
18 principles and techniques in creating advertising material for others.” *Id.* ¶¶ 36, 37. SalesBrain also
19 attached three new slides to the Second Amended Complaint that show AngelVision’s use of the
20 neuromarketing principals (although these slides still attribute the principals to SalesBrain). *Id.*,
21 Exh. C.

22 AngelVision thereafter filed a motion to dismiss the trademark infringement claim in
23 SalesBrain’s Second Amended Complaint.³ Motion, ECF No. 46. Within the same document,
24 AngelVision also moved for sanctions against SalesBrain’s attorney Kirsten Jahn for unreasonably
25 multiplying proceedings. *Id.* at 14-16. With respect to its request for sanctions, AngelVision alleges
26 that the trademark infringement claim found in the Second Amended Complaint is “the very same
27 claim where the same attributions are present” as found in the First Amended Complaint. *Id.* at 16.
28 AngelVision states that the “additional factual allegations” of the trademark infringement claim in
the Second Amended Complaint “do not in the least bit change the substance of SalesBrain’s
purported Lanham Act claim,” which AngelVision moved to dismiss “on the very same ground,”
since the new slides in the exhibit attached to the Second Amended Complaint still attribute

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1 SalesBrain as the source of the Neuromarketing principles used by AngelVision. *Id.* at 15-16. Thus,
2 SalesBrain “unnecessarily force[d] AngelVision to bring another motion to dismiss, on grounds
3 identical to its earlier motion to dismiss, and incur attorney’s fees associated therewith in the amount
4 of \$11,650,” the amount that AngelVision requests in sanctions. *Id.* at 16. AngelVision also stated
5 that the re-allegation of the claim was made “in bad faith, unreasonable and simply improper.” *Id.*

6 ANALYSIS

7 I. LEGAL STANDARD

8 A. Sanctions Generally

9 When a district court decides to impose sanctions or discipline, it must clearly delineate under
10 which authority it acts to insure that the attendant requirements are met. *Weissman v. Quail Lodge,*
11 *Inc.*, 179 F.3d 1194, 1200 (9th Cir. 1999) (citing *Keegan Management Co. Sec. Litig.*, 78 F.3d 431,
12 435 (9th Cir. 1996) (“For a sanction to be validly imposed, the conduct must be sanctionable under
13 the authority relied on.”) (internal quotation marks and citation omitted)). “The imposition of
14 sanctions requires a statement of reasons for the district court’s action, including the need for the
15 particular sanctions imposed.” *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1081 (9th Cir. 2000)
16 (“The imposition of sanctions requires a statement of reasons for the district court’s action, including
17 the need for the particular sanctions imposed.”) (citing *G.J.B. & Assocs., Inc. v. Singleton*, 913 F.2d
18 824, 830 (10th Cir. 1990) (“If the district court ultimately imposes sanctions, detailed findings are
19 necessary to identify the objectionable conduct and provide for meaningful appellate review.”)).

20 B. 28 U.S.C. § 1927

21 28 U.S.C. § 1927 provides that “[a]ny attorney or other person admitted to conduct cases in any
22 court of the United States or any Territory thereof who so multiplies the proceedings in any case
23 unreasonably and vexatiously may be required by the court to satisfy personally the excess costs,
24 expenses, and attorneys’ fees reasonably incurred because of such conduct.” Sanctions imposed
25 pursuant to 28 U.S.C. § 1927, however, may only be imposed based on activities before the
26 sanctioning court. *Grid Sys. Corp. v. John Fluke Mfg. Co., Inc.*, 41 F.3d 1318, 1319 (9th Cir. 1994)
27 (per curiam). They also “must be supported by a finding of subjective bad faith.” *In Re Keegan*
28 *Mgmt. Co., Sec. Litig.*, 78 F.3d at 436 (citations and quotation marks omitted). Such “[b]ad faith is

1 present when an attorney knowingly or recklessly raises a frivolous argument, or argues a
2 meritorious claim for the purpose of harassing an opponent.” *Id.* When awarding sanctions under §
3 1927 (or pursuant to the Court’s inherent authority), district courts have discretion in determining
4 whether sanctions are appropriate and, if so, in what amount. *Trulis v. Barton*, 107 F.3d 685, 694
5 (9th Cir. 1995); *F.J. Hanshaw Enterprises, Inc. v. Emerald River Development, Inc.*, 244 F.3d 1128,
6 1135 (9th Cir. 2001).

7 **C. Inherent Powers**

8 Courts also are invested with inherent powers that are “governed not by rule or statute but by the
9 control necessarily vested in courts to manage their own affairs so as to achieve the orderly and
10 expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link*
11 *v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). “This circuit has recognized as part of a district
12 court’s inherent powers the ‘broad discretion to make discovery and evidentiary rulings conducive to
13 the conduct of a fair and orderly trial. Within this discretion lies the power . . . to exclude testimony
14 of witnesses whose use at trial . . . would unfairly prejudice an opposing party.’” *Unigard Sec. Ins.*
15 *Co. v. Lakewood Engineering & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir. 1992) (quoting *Campbell*
16 *Indus. v. M/V Gemini*, 619 F.2d 24, 27 (9th Cir. 1980)). Although the caselaw is somewhat
17 equivocal about the state of mind required to impose sanctions under the court’s inherent power, *see*
18 *United Medical Supply Co., Inc. v. U.S.*, 77 Fed. Cl. 257, 266-67 (Fed. Cl. 2007), the Ninth Circuit
19 has concluded that sanctions are available under the court’s inherent power if “preceded by a finding
20 of bad faith, or conduct tantamount to bad faith,” such as recklessness “combined with an additional
21 factor such as frivolousness, harassment, or an improper purpose.” *Fink v. Gomez*, 239 F.3d 989,
22 994 (9th Cir. 2001); *see Gomez v. Vernon*, 255 F.3d 1118, 1134 (9th Cir. 2001).

23 **II. APPLICATION**

24 AngelVision’s request for sanctions fails for two reasons. First, as SalesBrain points out, it fails
25 because it was not filed separately. Under Civil Local Rule 7-8, “[a]ny motion for sanctions,
26 regardless of the sources of authority invoked, must . . . be separately filed.” N.D. Cal. Civil L.R. 7-
27 8. AngelVision’s request for sanctions was contained within its motion to dismiss and therefore
28 does not comply with Civil Local Rule 7-8.

1 Second, even if AngelVision had filed its motion separately, the court does not find, as
2 AngelVision suggests, that SalesBrain re-alleged its claim in bad faith. Indeed, it appears that
3 SalesBrain attempted to add allegations to support its theory that consumer confusion has resulted
4 from AngelVision’s use of the neuromarketing principles. As described above, in its Second
5 Amended Complaint, SalesBrain alleges that its customers or potential customers actually have been
6 confused by AngelVision’s use of the neuromarketing principals. *See* SAC, ECF No. 44 at ¶¶ 35-37.
7 At the pleadings stage—which is where this action is at and where SalesBrain’s allegations are taken
8 as true—this is enough. Therefore, the court finds that Ms. Jahn’s conduct was not improper
9 **DENIES** AngelVision’s request for sanctions.

CONCLUSION

11 For the reasons stated above, the court **DENIES** Angelvision's request for sanctions. This case
12 is closed.

13 || This disposes of ECF No. 46.

IT IS SO ORDERED.

15 || Dated: May 31, 2013

WBK

LAUREL BEELER
United States Magistrate Judge