

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

INTEL CORPORATION,

No. C 13-0232 CW

Plaintiff,

ORDER GRANTING  
MOTION FOR LEAVE  
TO AMEND (Docket  
No. 28)

v.

BEVINTEL, LLC, et al.,

Defendants.

Plaintiff Intel Corporation moves for leave to amend its complaint. Defendant Bevintel, LLC opposes the motion. After considering the parties' submissions, the Court finds this matter suitable for decision without oral argument and now grants the motion.

DISCUSSION

Plaintiff filed this trademark infringement action in January 2013. On July 3, 2013, it sought Defendant's consent to amend its complaint. Docket No. 28, Declaration of Donald A. Thompson, Ex. B. After Defendant failed to respond, Plaintiff filed the instant motion on July 11, 2013, the deadline for amending the pleadings. See Docket No. 20, Case Management Order.

Because Plaintiff does not seek to amend the scheduling order here, its motion is governed by Federal Rule of Civil Procedure 15. That rule provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Because the rule "favors a liberal policy towards amendment, the nonmoving party bears the burden of demonstrating why leave to amend should not be granted." Genentech, Inc. v. Abbott Labs., 127 F.R.D. 529,

1 530-31 (N.D. Cal. 1989) (citing Senza-Gel Corp. v. Seiffhart, 803  
2 F.2d 661, 666 (Fed. Cir. 1986)). Courts generally consider five  
3 factors when deciding whether to grant a party leave to amend:  
4 undue delay, bad faith, futility of amendment, prejudice to the  
5 opposing party, and whether the party has previously amended the  
6 pleadings. Ahlmeier v. Nev. Sys. of Higher Educ., 555 F.3d 1051,  
7 1055 n.3 (9th Cir. 2009).

8 Here, Plaintiff seeks to substitute twenty-one of Defendant's  
9 California franchisees for Doe Defendants. Defendant asserts that  
10 these franchisees' names were publicly available -- both on its  
11 own website and on the California Department of Business  
12 Oversight's (DBO) website -- when Plaintiff first filed this  
13 lawsuit. Thus, Defendant contends, Plaintiff's proposal to  
14 substitute these franchisees at this stage in the litigation is  
15 "untimely, prejudicial and brought in bad faith." Docket No. 30,  
16 Opp. 1. This argument is unpersuasive.

17 Plaintiff asserted in its original complaint that it "has not  
18 been able to identify Does 1-25 because it does not have full  
19 access to information regarding all of Bevintel's licensees and  
20 franchisees." Docket No. 1, Complaint ¶ 8. It further stated,  
21 "Intel will amend its complaint as promptly as discovery permits  
22 it to identify all applicable Does." Id. In light of these  
23 statements notifying Defendant that Plaintiff planned to amend its  
24 complaint in this way, Defendant cannot now claim prejudice or bad  
25 faith.

26 Nor can Defendant reasonably claim undue delay. Plaintiff  
27 sought Defendant's consent to the proposed amendment more than a  
28 week before the deadline to add new parties and more than two

1 months before the close of fact discovery. It then gave Defendant  
2 over a week to respond to its request before filing a timely  
3 motion for leave to amend. In short, Plaintiff complied with the  
4 scheduling order and moved to amend at its earliest practical  
5 opportunity.<sup>1</sup>

6 While Defendant contends that Plaintiff could have obtained  
7 the names of its franchisees earlier in this litigation, Defendant  
8 has not presented sufficient evidence to support this claim. For  
9 instance, Defendant has not offered any evidence to show that its  
10 website featured an exhaustive list of its franchisees when  
11 Plaintiff filed this suit. Its supporting declaration does not  
12 provide a URL for its website, let alone any evidence that the  
13 website accurately identified all of its franchisees in January  
14 2013. Defendant has similarly failed to show that the DBO's  
15 website contained accurate information about its franchisees at  
16 that time. In fact, Defendant concedes that the most recent  
17 franchisee disclosure statements available on the DBO's website  
18 were filed in July 2011 -- more than a full year before Plaintiff  
19 filed this suit -- and that the DBO has yet to upload its more  
20 recent disclosure statements. See Docket No. 30-1, Declaration of  
21 John J. Dabney ¶ 6.

22 Even if all of Defendant's franchisee information was  
23 publicly available when Plaintiff filed its original complaint,  
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25 <sup>1</sup> Plaintiff's compliance with the scheduling order is one of  
26 several factors that distinguish this case from Jackson v. Bank of  
27 Hawaii, which Defendant cites for support. 902 F.2d 1385, 1388 (9th  
28 Cir. 1990) (noting that the plaintiffs "informed the court of their  
intention to file an amended complaint in March 1987, in May 1987, and  
in February 1988, but they delayed offering their amended complaint  
until May 1988").

1 Defendant still failed to direct Plaintiff to this information  
2 until last month when it filed its opposition to the instant  
3 motion. None of its responses to Plaintiff's discovery requests  
4 mention any websites or other publicly available resources where  
5 Plaintiff might find an exhaustive list of Defendant's California  
6 franchisees. As such, Defendant has failed to show that  
7 Plaintiff's proposed amendment is untimely or prejudicial and  
8 Plaintiff must be granted leave to amend its complaint.

9 CONCLUSION

10 For the reasons set forth above, Plaintiff's motion for leave  
11 to amend its complaint (Docket No. 28) is GRANTED. Within three  
12 days of this order, Plaintiff shall file the version of its First  
13 Amended Complaint (1AC) that is currently attached as Exhibit A to  
14 Donald Thompson's declaration in support of Plaintiff's reply.<sup>2</sup>  
15 Docket No. 32. All deadlines set forth in the case management  
16 order shall remain unchanged.

17 IT IS SO ORDERED.

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19 Dated: 8/12/2013

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CLAUDIA WILKEN  
United States District Judge

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<sup>2</sup> The Court notes that this version of Plaintiff's proposed 1AC identifies five franchisees who were not identified in an earlier version of Plaintiff's proposed 1AC. Because Plaintiff learned of these identities after Defendant filed its opposition brief -- and only because Defendant did not disclose them sooner -- Plaintiff is permitted to use the later-filed version of its proposed 1AC. The addition of these additional franchisees to Plaintiff's proposed 1AC does not change the logic or substance of this order.