

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

H.I.S.C., INC. and DEPALMA
ENTERPRISES, INC.,

Plaintiff,

v.

FRANMAR INTERNATIONAL
IMPORTERS, LTD. et al.,

Defendants.

FRANMAR INTERNATIONAL
IMPORTERS, LTD.,

Counterclaimant,

v.

H.I.S.C., INC. and DEPALMA
ENTERPRISES, INC.,

Counterclaim Defendants.

Case No.: 3:16-cv-00480-BEN-WVG

ORDER:

**(1) DENYING DEFENDANTS'
MOTION TO DISMISS;**

**(2) DENYING
PLAINTIFFS'/COUNTERCLAIM
DEFENDANTS' MOTION TO
DISMISS**

[Docket Nos. 15, 18]

Pending before the Court is the Motion to Dismiss filed by Defendant Maria Rajanayagram (Docket No. 15), and the Motion to Dismiss filed by Plaintiffs-Counterclaim Defendants H.I.S.C., Inc. and DePalma Enterprises, Inc. (Docket No. 18.)

1 The motions are fully briefed. The Court finds the Motions suitable for determination on
2 the papers without oral argument, pursuant to Civil Local Rule 7.1.d.1. For the reasons
3 set forth below, both Motions are **DENIED**.

4 **BACKGROUND¹**

5 Defendant-Counterclaimant Franmar International Importers, Ltd. (“Franmar”) is a
6 family-run business that sells outdoor brooms. (Answer & Countercl. at 12.) Franmar is
7 owned and operated by Defendant Maria Rajanayagam (“Rajanayagam”). The design of
8 The Garden Broom/The Original Garden Broom was inspired by the traditional Sri
9 Lankan “Ekel broom.” (*Id.*) The following image is an example of a traditional Sri
10 Lankan Ekel broom:



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20 (Answer & Countercl. at 13.)

21 Defendant Ravi Industries, Ltd. (“Ravi”), is a company that manufactures
22 Ekel brooms in Sri Lanka. In 2007, Rajanayagam began collaborating with Ravi to
23 develop an “Ekel-like broom” for commercial sale in the United States and Canada. (*Id.*)
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26 ¹ The following overview of the relevant facts are drawn from the allegations of
27 Plaintiffs’ Complaint and Defendants’ Counterclaim. (Docket Nos. 1, 14.) The Court is
28 not making findings of fact. The allegations relevant to each Motion are detailed in
analyzing the individual Motions.

1 After nearly three years of research and development, Rajanayagam and Ravi created “a
2 new Ekel broom,” which they agreed to call “The Garden Broom.” (Answer &
3 Countercl. at 13-14.) Rajanayagam later changed the name to “The Original Garden
4 Broom.” (*Id.* at 14.) The Garden Broom/The Original Garden Broom is depicted in the
5 images below.



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16 (Answer & Countercl. at 15.)

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18 Rajanayagam allegedly designed the “ornate weaving patterns, the coconut shell
19 atop the bristles, and the smooth handle.” (*Id.* at 14.) Additionally, “the intricate and
20 ornate weaving on the broom, [the] wide-fan appearance, the coconut shell on the top of
21 the bristles and the cylindrical, smooth handle,” allegedly constitute The Original Garden
22 Broom’s trade dress. (*Id.* at 14-15.)

23 In 2010, Rajanayagam incorporated Franmar to market and sell The Original
24 Garden Broom. Franmar partnered with Ravi and became Ravi’s sole and exclusive
25 distributor in North America for The Original Garden Broom. Since 2010, Franmar has
26 marketed, advertised, imported and sold The Original Garden Broom in the U.S.;
27 Franmar’s U.S. sales exceed 100,000 brooms. On September 9, 2014, Ravi was issued
28 U.S. Patent No. D712,664S (hereinafter, “the ’664 patent”) pursuant to an application

1 filed on July 6, 2012. Franmar and Rajanayagam claim to own the exclusive right to
2 distribute the broom depicted in the '664 patent (i.e. The Original Garden Broom).

3 Between February 2012 and July 25, 2015, Plaintiffs-Counterclaim Defendants
4 H.I.S.C., Inc. ("H.I.S.C.") and DePalma Enterprises, Inc. ("DePalma," collectively,
5 "Plaintiffs") purchased "certain garden brooms" from Franmar and Rajanayagam.
6 (Compl. at 3-4.) Plaintiffs marketed and sold the brooms on the QVC channel,
7 QVC.com, shopdepalma.com, Amazon.com, and at various home and garden trade
8 shows. Aside from the individual purchase orders, Plaintiffs and Defendants did not
9 enter into any written agreements for the garden broom products. (Compl. at 4; Answer
10 & Countercl. at 3.)

11 On or about July 25, 2015, Franmar and Rajanayagam sent Plaintiffs a "Notice of
12 Termination" ("the Termination Letter") advising Plaintiffs that they were "terminat[ing]
13 all of Franmar's business dealings with H.I.S.C." (Compl. at 4, Ex. A.) The Termination
14 Letter further instructed Plaintiffs to "immediately . . . cease selling the Product, cease
15 using in any way all of Franmar [sic] marks, property and products and cease all
16 representation [sic] of Franmar." (*Id.*)

17 On July 28, 2015, Plaintiffs, through their counsel, sent Franmar and Rajanayagam
18 a letter advising them of Plaintiffs' right under the Exhaustion Doctrine to sell off any
19 remaining inventory they had lawfully purchased. Plaintiffs did not receive an immediate
20 response to this letter from Franmar or Rajanayagam. About one month later, Franmar
21 and Rajanayagam, through their counsel, sent a letter to QVC, Inc. asserting intellectual
22 property rights to the garden brooms Plaintiffs had purchased from Franmar and
23 Rajanayagam.

24 After receiving the Termination Letter, Plaintiffs began procuring new garden
25 brooms from a new manufacturer. During and/or after selling off the brooms Plaintiffs
26 had purchased from Franmar and Rajanayagam, Plaintiffs began selling the new brooms
27 "with a new name and with no reference to Franmar, Ravi or their respective 'Franmar'
28 or 'Ravi' brands." (Compl. at 7.)

1 On September 1, 2015, counsel for Franmar and Rajanayagam sent Plaintiffs a
2 letter in response to their July 28, 2015 letter. This letter demanded Plaintiffs
3 “immediately cease and desist any further infringement of Franmar’s exclusive rights to
4 its intellectual property, including without limitation, The Original Garden Broom
5 (‘Broom’), and all associated patents, copyrights, trademarks, trade dress, good will and
6 marketing/advertising ideas.” (*Id.* at 7-8.) The letter further accused Plaintiffs of
7 violating “Franmar’s IP” via their sales of “The Ultimate Garden Broom” and “The
8 Ultimate Coconut Garden Broom.” (*Id.* at 8.) Plaintiffs and Franmar and Rajanayagam
9 exchanged two additional letters on September 9, 2015 and September 11, 2015,
10 expressing their disagreement about the alleged violations of Franmar’s IP.

11 In its Counterclaim, Franmar alleges Plaintiffs “designed, manufactured, marketed,
12 and/or sold, without Franmar’s knowledge or permission, a blatant ‘knock off’ of The
13 Original Garden Broom Trade Dress and The Original Garden Broom trademark under
14 the name ‘The Ultimate Garden Broom.’” (Answer & Countercl. at 19.) Franmar
15 alternatively or additionally alleges that Plaintiffs “repackaged The Original Garden
16 Broom,” to remove Franmar’s labeling and re-name the broom as “The Ultimate Garden
17 Broom.” (*Id.* at 21.)

18 The parties have not communicated with each other since September 11, 2015. On
19 or around December 4, 2015, counsel for Franmar and Rajanayagam sent a letter to
20 Entertainment On Location, Inc. and O’Loughlin Trade Shows Entertainment on
21 Location, Inc. Each of these corporations organizes flower shows in which Plaintiffs
22 intended to attend. The substance of the letters accused Plaintiffs of intending to display
23 “knock off” brooms in violation of Franmar’s rights, including “trade dress and design of
24 the Broom” at their upcoming flower shows. (Compl. at 9.) As a result, Plaintiffs were
25 forced to retain counsel to respond to each of Defendants’ letters to ensure their presence
26 at both of these flower shows. Below is an image purporting to show a side-by-side
27 comparison of the brooms:
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(Answer & Countercl. at 20.)

PROCEDURAL HISTORY

Plaintiffs H.I.S.C. and DePalman filed their Complaint on February 23, 2016. (Docket No. 1.) On May 25, 2016, Defendants Franmar and Rajanayagam filed their Answer and Franmar's Counterclaim. (Docket No. 14.) On the same day, Defendant Rajanayagam filed her Motion to Dismiss for Failure to State a Claim. (Docket No. 15.) On June 20, 2016, Plaintiffs filed their Motion to Dismiss for Failure to State a Claim and for a More Definite Statement. (Docket No. 18.)

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate if, taking all factual allegations as true, the complaint fails to state a plausible claim for relief on its face. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (requiring plaintiff to plead factual content that provides “more than a sheer possibility that a defendant has acted unlawfully”); accord *Anticancer Inc. v. Xenogen Corp.*, 248 F.R.D. 278, 282 (S.D. Cal. 2007) (holding *Twombly*’s plausibility standard applies to claims, counterclaims, cross-claims, and third-party claims). Under this standard, dismissal is appropriate if the complaint fails to state enough facts to raise a reasonable expectation that discovery will reveal evidence of the matter complained of, or if the complaint lacks a cognizable legal theory under which relief may be granted. *Twombly*, 550 U.S. at 556. “A claim is facially plausible ‘when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

DISCUSSION

I. Defendant Maria Rajanayagam’s Motion to Dismiss

Defendant Rajanayagam moves to dismiss Plaintiffs’ First through Fifth Claims for Relief against her for failure to state a claim. Specifically, Plaintiffs’ First through Fifth Claims seek the following declaratory judgments:

- (1) the ’664 patent is invalid and unenforceable;
- (2) Plaintiffs have not infringed and are not infringing upon the ’664 patent;
- (3) Defendants’ copyright infringement claims are invalid and Plaintiffs have not infringed and are not infringing upon Defendants’ copyrights;
- (4) Defendants’ trademark claims are unenforceable and Plaintiffs have not infringed and are not infringing upon Defendants’ trademarks; and

1 (5) Defendants' trade dress is unenforceable and Plaintiffs have not infringed and
2 are not infringing upon Defendants' trade dress.

3 (Def. Rajanayagam's Mot. at 2; Compl. at 9-14.) Each of these claims for relief are
4 predicated on Plaintiffs' allegations that Defendants have asserted and will continue to
5 assert wrongful claims of ownership to the aforementioned intellectual property rights.
6 (*Id.*)

7 The Declaratory Judgment Act ("Act") permits a federal court to "declare the
8 rights and other legal relations of any interested party seeking such declaration" in cases
9 "of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). In order to obtain
10 relief under the Act, a plaintiff must establish the existence of an Article III case or
11 controversy between the parties. *Anderson v. Everest Nat. Ins. Co.*, 984 F. Supp. 2d 974,
12 977 (D. Ariz. 2013) (citing *Societe de Conditionnement en Aluminium v. Hunter Eng'g*
13 *Co.*, 655 F.2d 938, 942 (9th Cir. 1981). Courts must determine "whether the facts
14 alleged, under all circumstances, show that there is a substantial controversy, between
15 parties having adverse legal interests, of sufficient immediacy and reality to warrant the
16 issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118,
17 127 (2007).

18 The sole basis of Rajanayagam's Motion is that Plaintiffs' Complaint does not
19 allege specific facts that Rajanayagam claimed "that she (as opposed to her company,
20 Franmar) owns or otherwise enjoys any legal interest in the '664 patent, the copyright, or
21 the trademarks or trade dress cited by Plaintiffs." (Def. Rajanayagam's Mot. at 2.)
22 (emphasis in original.) Rajanayagam further argues that, at most, Plaintiffs have alleged
23 that her company, Franmar, asserted its legal interests in the intellectual property rights of
24 which Plaintiffs seek the declaratory judgments. (*Id.* at 5.) Thus, she concludes,
25 Plaintiffs have failed to plead a concrete dispute between her and Plaintiffs, and the Court
26 should dismiss all five of Plaintiffs' claims for declaratory judgments against her.

27 Plaintiffs' Opposition asserts the Complaint expressly defined "Franmar" to
28 include both Franmar International Importers, Ltd. and Rajanayagam. (Pls.' Opp'n at 4.)

1 As a result, Plaintiffs argues, all allegations in the Complaint that follow their definition
2 must be read to include both Defendants. (*Id.*) In her Reply, Rajanayagam argues,
3 without legal support, that Plaintiffs “must plead a concrete dispute of sufficient
4 immediacy between the declaratory judgment plaintiff and *each* declaratory judgment
5 defendant.” (Def. Rajanayagam’s Reply at 2.) Rajanayagam further argues that
6 Plaintiffs have engaged in generalized pleading, which this Court may decline to accept,
7 and cited to a number of cases for the premise that courts routinely decline to accept
8 “such a shotgun approach to pleading claims.” (*Id.*)

9 It does not appear to the Court that the authority provided by Rajanayagam is
10 analogous to the present case because those cases refer to pleadings in which numerous
11 defendants are named, but it is not clear which acts are attributable to them.² (*Id.*)
12 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
13 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Specific
14 facts are not necessary; the statement need only ““give the defendant fair notice of what
15 the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89,
16 93–94 (2007), citing *Bell Atl. Corp.*, *supra*, 550 U.S. at 555 (internal citations omitted).

17 Here, Rajanayagam admits she “owns[s] and operate[s]” Franmar, and was heavily
18 involved in the design and production of the disputed broom. (Answer & Countercl. at
19 12, 14.) She also acknowledges that Plaintiffs have stated a claim against “Franmar” in
20 the Complaint. (See Def. Rajanayagam’s Mot. at 5.) Logically, if Rajanayagam finds a
21 cogent claim asserted against Franmar, she can similarly find a cogent claim asserted
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24 ² For example, Rajanayagam cited to *Atuahene v. City of Hartford*, 10 F. App’x 33, 34
25 (2d Cir. 2001) (dismissing complaint naming five defendants and John and Jane Doe
26 defendants for “failing to identify which defendants were alleged to be responsible for
27 which alleged violations” and “providing no factual basis to distinguish their conduct”);
28 *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (dismissing claims against
group of “Defendants,” which included any of the ten named defendants or John and Joe
Doe defendants, for failure to adhere to notice pleading standards).

1 against herself. The mere fact that Plaintiffs have pled claims asserting improper actions
2 by two defendants together, *i.e.* Rajanayagam and the company she owns and operates, is
3 not on its own determinative that Plaintiffs have failed to state a claim against the
4 individual defendant. Although the Court agrees that, in some circumstances, a plaintiff
5 who “lumps together” defendants has failed to give fair notice to the defendants of the
6 claims asserted against them individually, the Court finds Plaintiffs provided sufficient
7 notice of their claims against Rajanayagam in their Complaint.

8 Accordingly, Defendant Rajanayagam’s Motion to Dismiss is **DENIED**.

9 **II. Plaintiffs/Counterclaim Defendants’ Motion to Dismiss**

10 Franmar’s Counterclaim alleges four claims for relief: (1) trade dress infringement;
11 (2) unfair competition under 15 U.S.C. § 1125(a); (3) common law unfair competition;
12 and (4) unfair competition under California Business and Professions Code §§ 17200 *et*
13 *seq.* Plaintiffs move to dismiss Franmar’s Counterclaim in its entirety.

14 As a preliminary matter, although Plaintiffs move to dismiss all of Franmar’s
15 claims, after reviewing Plaintiffs’ Motion, the Court finds Plaintiffs only argue that
16 Franmar has failed to state a claim for trade dress,³ upon which the other three claims
17 rely. (Pls.’ Mot. at 2.) Thus, the Court need only determine whether Franmar has stated
18 a claim for trade dress or should be required to provide a more definite statement.

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22 ³ Although both Plaintiffs’ and Franmar’s moving papers discuss whether Franmar
23 adequately identified a “protectable trademark,” the Court did not discern a trademark
24 infringement claim in Franmar’s Counterclaim. The Counterclaim refers to “The
25 Original Garden Broom Trademark” at page 19, but none of the claims for relief appear
26 to allege a trademark infringement claim. (*See Answer & Countercl.* at 19, 21-25.)
27 Rather, as identified above, the Counterclaim asserts four claims for relief: (1) trade dress
28 infringement; (2) unfair competition under 15 U.S.C. § 1125(a); (3) common law unfair
competition; and (4) unfair competition under California Business and Professions Code
§§ 17200 *et seq.* Thus, the Court concludes these arguments are not relevant to the
instant Motion and it need not address them.

1 To assert a claim for trade dress infringement, a plaintiff must allege facts to show:
2 (1) the trade dress is non-functional; (2) the trade dress is inherently distinctive or has
3 acquired secondary meaning; and (3) the defendant's product creates a likelihood of
4 confusion to consumers. *See Millennium Labs., Inc. v. Ameritox, Ltd.*, 817 F.3d 1123,
5 1127 (9th Cir. 2016) (citing *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252,
6 1258 (9th Cir. 2001) (internal citations omitted)). Here, Plaintiffs do not assert that
7 Franmar has failed to plead the existence of any of the three elements. They argue
8 instead that Franmar's Counterclaim "only vaguely alleges the features it claims as its
9 protectable trade dress." (Pls.' Mot. at 4.) As such, Plaintiffs ask the Court to order
10 Franmar to provide a more definite statement. (*Id.* at 6.)

11 As stated above, Federal Rule of Civil Procedure 8(a)(2) requires only "a short and
12 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
13 8(a)(2). Additionally, "[t]he Ninth Circuit has emphasized that '[t]rade dress is the
14 composite tapestry of visual effects. Courts have repeatedly cautioned that, in
15 trademark—and especially trade-dress cases, the mark must be examined as a whole, not
16 by its individual constituent parts.'" *Lepton Labs, LLC v. Walker*, 55 F. Supp. 3d 1230,
17 1240 (C.D. Cal. 2014) (quoting *Clicks Billiards, supra*, 251 F.3d at 1259). At the
18 pleading stage, "[s]o long as a plaintiff has alleged a complete recitation of the concrete
19 elements of its alleged trade dress, it should be allowed to proceed." *Lepton Labs*, 55 F.
20 Supp. 3d at 1240 ("A court must test the legal merits of a plaintiff's alleged trade dress at
21 summary judgment or trial when the parties provide with all relevant, admissible
22 evidence—not at the pleading stage when the court has little more than the plaintiff's
23 allegations and the defendant's summary denial of them.").

24 Franmar cited to several cases⁴ where courts have found that photographs or other
25 images, in conjunction with written pleadings, were sufficient to identify a plaintiff's
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27 ⁴ *Emeco Indus., Inc. v. Restoration Hardware, Inc.*, No. C-12-5072 MMC, 2012 WL
28 6087329, at *1 (N.D. Cal. Dec. 6, 2012) (finding sufficient pleading of trade dress claim

1 claimed trade dress. Plaintiffs agree that “a plaintiff *can* sufficiently identify an alleged
2 trade dress infringement with a combination of specific allegations and photographs.”
3 (Pls.’ Reply at 2) (emphasis in original). Plaintiffs also acknowledge that Franmar’s
4 Counterclaim alleges it has a protectable trade dress interest in the “overall look and
5 configuration of The Original Garden Groom [sic], consisting of its shape, size, color,
6 and specific combination of components.” (Pls.’ Mot. at 4, citing Answer & Countercl.
7 at 14.) In addition, Plaintiffs admit Franmar’s Counterclaim alleges it has a protectable
8 interest in the following features: (1) the “wide-fan appearance,” (2) the “cylindrical,
9 smooth handle,” and (3) the “intricate and ornate weaving on the broom.”⁵ (Pls.’ Mot. at
10 6.) Nevertheless, Plaintiffs argue it cannot adequately respond without more specific
11 facts as to “what features Franmar alleges constitute its protected trade dress and what
12 aspects of that trade dress it alleges are infringed.” (*Id.*) Plaintiffs further argue that
13 “[s]imply putting a photograph of the two products next to each other . . . is not sufficient
14 information for Plaintiffs to prepare a response. (*Id.*)

15 The Court finds Plaintiffs’ argument meritless for two reasons. First, contrary to
16 Plaintiffs’ assertions, the Court finds that the combination of Franmar’s written
17 description of its claimed trade dress and the images provided is a sufficient “short and
18 plain statement of the claim” to indicate to Plaintiffs what Franmar alleges is its
19 protectable trade dress. *See* Fed. R. Civ. P. 8(a)(2); *Axis Imex, Inc. v. Sunset Bay Rattan,*
20 *Inc.*, No. C 08-3931 RS, 2009 WL 55178, at *3 (N.D. Cal. Jan. 7, 2009) (“Under Rule 8

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23 based on description of trade dress in pictorial and narrative forms); *Axis Imex, Inc. v.*
24 *Sunset Bay Rattan, Inc.*, No. C 08-3931RS, 2009 WL 55178, at *3 (N.D. Cal. Jan. 7,
25 2009) (finding pleading combined with attached images sufficient to identify claimed
26 trade dress); *Aadventure Prod., Inc. v. Simply Smashing, Inc.*, No. 07CV499 BTM(AJB),
2007 WL 2775128, at *1 (S.D. Cal. Sept. 20, 2007) (finding complaint’s identification of
the trade dress, as set forth in an exhibit to the complaint, to be sufficient).

27 ⁵ The Court notes Plaintiffs did not discuss that Franmar identified an additional feature
28 of the “coconut shell on the top of the bristles” as part of its trade dress. (Answer &
Countercl. at 14.)

1 of the [FRCP], this newly attached picture in combination with the pleadings . . .
2 sufficiently identifies the trade dress with particularity to warrant denial of the motion to
3 dismiss the trade dress claim.”) Second, Franmar alleged, alternatively or additionally,
4 that Plaintiffs’ infringed Franmar’s trade dress by repackaging Franmar’s brooms with
5 Plaintiffs’ own label. (Answer & Countercl. at 21.) In either case, Franmar alleges
6 Plaintiffs’ infringed upon its trade dress by copying either the individually described
7 features or the entire design of The Original Garden Broom.

8 Lastly, Plaintiffs argue, without any legal authority, that Franmar failed to state a
9 claim because it did not sufficiently allege that it owned the rights to the alleged trade
10 dress. Plaintiffs contend Franmar does not have standing to sue for trade dress
11 infringement because: (1) it did not allege assignment of the trade dress rights from
12 Rajanayagam, and (2) it failed to allege that its rights are superior to others’ trade dress
13 rights. (Pls.’ Mot. at 6.) In particular, Plaintiffs assert that Franmar lacks standing
14 because it did not allege that its trade dress rights were superior to those of Defendant
15 Ravi on the grounds that Ravi owns the patent⁶ to the disputed broom “with features
16 similar, if not identical to, Franmar’s alleged trade dress.” (Id. at 7.)

17 In its Opposition, Franmar cited to several cases to support its contention that it
18 was not required to allege ownership or superior rights to the claimed trade dress to have
19 standing to bring its trade dress infringement claim. (Franmar’s Opp’n at 6-7.)
20 Plaintiffs’ reply repeats its earlier arguments, but provides no contradicting authority for
21 its arguments.

22 Section 43(a) of the Lanham Act provides a cause of action for trade dress
23 infringement to “any person who believes that he or she is or is likely to be damaged” by
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26 ⁶ Plaintiffs identify and request the Court take judicial notice of Ravi’s Sri Lankan patent
27 application and the ’664 patent, attached to their Motion as Exhibits A and B, to support
28 this contention. The Court declines to take judicial notice because the patents are not
relevant to the Court’s determination of Franmar’s trade dress infringement claim, as will
be explained in further detail below.

1 a defendants' false designation of origin or use of false or misleading descriptions. 15
2 U.S.C. § 1125(a)(1). It reasonably follows that “[o]wnership is not a prerequisite for
3 standing in a § 43(a) claim.” *Chihuly, Inc. v. Kaindl*, No. C05-1801-JPD, 2006 WL
4 83462, at *3 (W.D. Wash. Jan. 11, 2006) (citing 4 J. Thomas McCarthy, *McCarthy on*
5 *Trademarks and Unfair Competition* § 27:21 (2005)). However, a non-owner must have
6 “some cognizable interest in the allegedly infringed trademark” to have standing. *Id.*
7 The Ninth Circuit has previously held that, to establish standing for a claim under the
8 “false association prong” of § 43 of the Lanham Act, a plaintiff “need only allege
9 commercial injury based upon the deceptive use of a trademark or its equivalent.” *Jack*
10 *Russell Terrier Network of N. Ca. v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1037 (9th
11 Cir. 2005).

12 As the Court discussed above, Franmar’s Counterclaim sufficiently identifies its
13 claimed trade dress. Franmar’s Counterclaim alleges it was “Ravi’s sole and exclusive
14 distributor in North America for The Original Garden Broom.” (Answer & Countercl. at
15 14.) As a result of Plaintiffs’ alleged trade dress infringement, Franmar “lost substantial
16 sales of The Original Garden Broom and the value of [its] trade dress.” (*Id.* at 22.)
17 Additionally, Franmar suffered monetary damages consisting of the “sales and profits”
18 obtained by Plaintiffs as a result of their infringement. (*Id.*) At this initial pleading stage,
19 the Court finds Franmar has alleged sufficient facts to establish standing for its trade
20 dress infringement claim.

21 Therefore, Plaintiffs’ Motion to Dismiss is **DENIED**.

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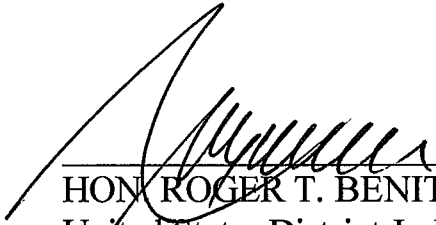
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1 **CONCLUSION**

2 For the reasons set forth above, the Court **DENIES** both Defendant Rajanayagam's
3 Motion to Dismiss and Plaintiffs' Motions to Dismiss.

4 **IT IS SO ORDERED.**

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6 DATED: December 4, 2016

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9 HON. ROGER T. BENITEZ
10 United States District Judge
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