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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GREENBROZ, INC., a Nevada  
12 corporation,  
13 Plaintiff/Counter-Defendant,  
14 v.  
15 LAEGER BUILT, LLC d/b/a  
16 TRIMBROS.COM, an Oregon limited  
17 liability company; and DOES 1-10,  
18 Defendant/Counter-Claimant.

Case No.: 16-cv-02946-CAB-BLM

**ORDER GRANTING MOTION TO  
DISMISS COUNTERCLAIM AND  
MOTION TO STRIKE  
AFFIRMATIVE DEFENSE**

[Doc. No. 19]

19 This matter is before the Court on Plaintiff’s motion to dismiss Defendant’s  
20 counterclaims and motion to strike an affirmative defense. The motion is fully briefed and  
21 the Court deems it suitable for submission without oral argument. For the reasons set forth  
22 below, the motion is granted.

23 **I. Background**

24 Plaintiff Greenbroz, Inc. (“Greenbroz”) is the owner of a design patent for a blade  
25 assemble apparatus for trimming agricultural products (“the Patent”). [Doc. No. 1 ¶¶ 4,  
26 12.] On June 13, 2016, Greenbroz sent a cease and desist letter to Defendant Laeger Built  
27 LLC d/b/a Trimbros.com (“Trimbros”), stating that Trimbros’s agricultural trimmer was  
28 infringing on Greenbroz’s Patent. [*Id.* at ¶ 16.] Trimbros responded on June 29, 2016,

1 denying it was infringing and refusing to comply with the demands contained therein.  
2 [Doc. No. 12-4 at 2-3.] On December 2, 2016, Greenbroz filed its Complaint against  
3 Trimbroz alleging patent infringement, California trademark infringement, and unfair  
4 competition under state common law and the Lanham Act. [Doc. No. 1.]

5 After filing a motion to dismiss for lack of personal jurisdiction, which the Court  
6 denied, Trimbroz filed an answer, affirmative defenses, and four counterclaims for  
7 declaratory judgment of trademark and patent non-infringement and invalidity. [Doc. No.  
8 16.] Greenbroz now moves to dismiss the counterclaims and to strike an affirmative  
9 defense that “Plaintiff’s allegations are barred, in whole or in part, to the extent that  
10 Plaintiff has misused its intellectual property by knowingly asserting rights against  
11 Defendant when Plaintiff knows or should know that the asserted rights are invalid and/or  
12 not infringed and/or unenforceable.” [Doc. No. 16 at ¶ 69.]

## 13 **II. Legal Standards**

### 14 **A. Motion to Dismiss Counterclaims**

15 “A motion to dismiss a counterclaim brought pursuant to Federal Rule of Civil  
16 Procedure 12(b)(6) is analyzed under the same standard as a Rule 12(b)(6) motion to  
17 dismiss a plaintiff’s complaint.” *Leadership Studies, Inc. v. Blanchard Training & Dev.,*  
18 *Inc.*, No. 15CV1831-WQH-KSC, 2017 WL 3315652, at \*4 (S.D. Cal. Aug. 2, 2017). To  
19 survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient  
20 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
21 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
22 U.S. 544, 570 (2007)). Thus, the Court “accept[s] factual allegations in the complaint as  
23 true and construe[s] the pleadings in the light most favorable to the nonmoving party.”  
24 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).<sup>1</sup> On  
25 the other hand, the Court is “not bound to accept as true a legal conclusion couched as a  
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28 <sup>1</sup> The Federal Circuit applies regional circuit law to the review of motions to dismiss. *OIP Tech., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015).

1 factual allegation.” *Iqbal*, 556 U.S. at 678; *see also Lee v. City of Los Angeles*, 250 F.3d  
2 668, 679 (9th Cir. 2001) (“Conclusory allegations of law are insufficient to defeat a motion  
3 to dismiss”). Nor is the Court “required to accept as true allegations that contradict exhibits  
4 attached to the Complaint or . . . allegations that are merely conclusory, unwarranted  
5 deductions of fact, or unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629  
6 F.3d 992, 998 (9th Cir. 2010). “In sum, for a complaint to survive a [12(b)(6)] motion to  
7 dismiss, the non-conclusory factual content, and reasonable inferences from that content,  
8 must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*  
9 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

## 10 **B. Motion to Strike**

11 Under Federal Rule of Civil Procedure 12(f), a court “may order stricken from any  
12 pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous  
13 matter.” Fed. R. Civ. P. 12(f). “Motions to strike are generally disfavored and ‘should not  
14 be granted unless the matter to be stricken clearly could have no possible bearing on the  
15 subject of the litigation.’” *Synopsys, Inc. v. Ubiquiti Networks, Inc.*, No. 17-CV-00561-  
16 WHO, 2017 WL 3485881, at \*6 (N.D. Cal. Aug. 15, 2017) (quoting *Platte Anchor Bolt,*  
17 *Inc. v. IHI, Inc.*, 352 F.Supp.2d 1048, 1057 (N.D. Cal. 2004)). “[C]ourts often require a  
18 showing of prejudice by the moving party as a condition to granting such relief.” *Nestle*  
19 *USA, Inc. v. Crest Foods, Inc.*, No. LACV1607519JAKAFMX, 2017 WL 3267665, at \*22  
20 (C.D. Cal. July 28, 2017) (internal quotation marks and citation omitted). “[T]he key to  
21 determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff  
22 fair notice of the defense.” *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)  
23 (citing *Conley v. Gibson*, 355 U.S. 41, 47–48 (1957)). “[T]he ‘fair notice’ required by the  
24 pleading standards only requires describing the defense in ‘general terms.’” *Kohler v.*  
25 *Flava Enterprises, Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015) (citing 5 Charles Alan Wright  
26 & Arthur R. Miller, *Federal Practice and Procedure* § 1274 (3d ed. 1998)).

1           **III. Discussion**

2           Trimbros asserts counterclaims for declaratory judgments of: (1) patent non-  
3 infringement; (2) trademark and/or trade dress non-infringement; (3) patent invalidity; and  
4 (4) trademark and/or trade dress invalidity. “[T]o be entitled to the presumption of truth,  
5 allegations in a complaint or counterclaim may not simply recite the elements of a cause  
6 of action, but must contain sufficient allegations of underlying facts to give fair notice and  
7 to enable the opposing party to defend itself effectively.” *Star v. Baca*, 652 F.3d 1202,  
8 1216 (9th Cir. 2011). Here, Trimbros’s counterclaims contain no factual allegations  
9 whatsoever, asserting only legal conclusions. Accordingly, the counterclaims do not  
10 contain sufficient factual matter to state plausible claims for relief.

11           Greenbroz also moves to strike Trimbros’s affirmative defense of misuse of  
12 intellectual property because Trimbros does not allege any facts to give Greenbroz fair  
13 notice. Unlike with its counterclaims, Trimbros “must merely provide [Greenbroz] fair  
14 notice of the issue involved through their affirmative defenses.” *Wyshak*, 607 F.2d at 827.  
15 Nevertheless, the affirmative defense in question does not satisfy this lesser standard  
16 because it refers generally to Greenbroz’s “intellectual property” without distinguishing  
17 between misuse of patent rights or misuse of trademark rights. If Treebros is asserting an  
18 affirmative defense of patent misuse, it must “allege facts that plausibly suggest that  
19 [Greenbroz] has impermissibly broadened the scope of a patent with anticompetitive  
20 effect.” *Beco Dairy Automation, Inc. v. Glob. Tech Sys., Inc.*, No. 112CV01310LJOSMS,  
21 2015 WL 9583012, at \*2 (E.D. Cal. Dec. 31, 2015).

22           **IV. Conclusion**

23           For the reasons set forth above, it is hereby **ORDERED** as follows:

- 24           1. The motion to dismiss Trimbros’s counterclaims is **GRANTED**;  
25           2. The motion to strike Trimbros’s affirmative defense is **GRANTED**;  
26           3. Trimbros’s counterclaims and the affirmative defense at paragraph 69 of the  
27           Answer and Counterclaim are **DISMISSED WITHOUT PREJUDICE**; and  
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1 4. Trimbros must file any amended answer and counterclaims on or before  
2 **September 5, 2017.**

3 It is **SO ORDERED.**

4 Dated: August 22, 2017



5  
6 Hon. Cathy Ann Bencivengo  
7 United States District Judge  
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