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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IBRAHIM NASSER d/b/a SERIOUS  
SCENTS,  
  
Plaintiff,  
  
v.  
  
OUSSAMA ELASSIR d/b/a D&J  
DISTRIBUTING  
MANUFACTURING; ADNAN  
ELASSIR; and EXOTICA  
FRESHENERS CORPORATION,  
  
Defendants.

Case No.: 20-cv-197-WQH-AGS

**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendants Oussama Ellassir, Adnan Ellassir, and Exotica Fresheners Corporation. (ECF No. 10).

**I. BACKGROUND**

On January 30, 2020, Plaintiff Ibrahim Nasser d/b/a Serious Scents, proceeding pro se, filed a Complaint against Defendants Oussama Ellassir d/b/a D & J Distributing Manufacturing, Adnan Ellassir, and Exotica Fresheners Corporation. (ECF No. 1). In the Complaint, Plaintiff alleges that he has “manufactured, advertised, marketed, promoted, distributed, and sold air fresheners, air fragrancing, [and] perfume” to gas stations, car

1 washes, and convenience stores since 1993. (Id. ¶¶ 1, 12). Plaintiff alleges that he uses the  
2 marks “A BLAST OF FRESHNESS” and “AMOR LOVE AMOUR” on his products. (Id.  
3 ¶ 3).

4 Plaintiff alleges that he has been using the mark “A BLAST OF FRESHNESS” since  
5 1993. (Id. ¶ 16). Plaintiff alleges that he has been using the mark “A BLAST OF  
6 FRESHNESS” for air fresheners and perfume since 2009 and for air fragranc-  
7 ing preparations since 2012. (Id.). Plaintiff alleges that he filed a trademark application for the  
8 mark “A BLAST OF FRESHNESS” for air fresheners in 2009. (Id. ¶ 13). Plaintiff alleges  
9 that he filed a trademark application for the mark “A BLAST OF FRESHNESS” for air  
10 fragranc- ing preparations in 2018. (Id.). Plaintiff alleges that he “has been using the mark  
11 AMOR LOVE AMOUR since 2012.” (Id. ¶ 19). Plaintiff alleges that he filed a trademark  
12 application for the mark “AMOR LOVE AMOUR” for air fragranc- ing preparations and air  
13 deodorizers on July 29, 2014. (Id.).

14 Plaintiff alleges that his products were previously produced and packaged by “D &  
15 J Distributing Manufacturing (AKA Exotica Fresheners).” (Id. ¶ 23). Plaintiff alleges that  
16 D & J Distributing Manufacturing “is a multi-national corporation . . . .” (Id. ¶ 9). Plaintiff  
17 alleges that Defendant Oussama Ellassir is an “[a]gent” of D & J Distributing  
18 Manufacturing. (Id. ¶¶ 17, 22). Plaintiff alleges that “Defendants . . . s[ell] [ ] air fresheners  
19 and fragranc- ing products that directly compete[ ] with the air fresheners and fragranc-  
20 ing products offered by Plaintiff Nasser.” (Id. ¶ 24). Plaintiff alleges that “Defendant has begun  
21 to [ ] produce air fresheners whose mark bears a strong resemblance to Plaintiff Nasser’s.”  
22 (Id. ¶ 4). Plaintiff alleges that D & J Distributing Manufacturing “applied for the mark  
23 LOVE ICE” on December 4, 2014. (Id. ¶ 20). Plaintiff alleges that D & J Distributing  
24 Manufacturing “filed for the trademark AROMA BLAST . . .” in 2018. (Id. ¶ 14). Plaintiff  
25 alleges that he opposed the “AROMA BLAST” trademark application in 2019. (Id. ¶ 18).

26 Plaintiff alleges that “Defendants’ marks possess the same distinctive word[s] as  
27 Plaintiff Nasser’s marks such as the word[s] ‘blast[ ]’ and ‘love.’” (Id. ¶ 39). Plaintiff  
28 alleges that Plaintiff and Defendants market and sell their products “in the same channels

1 such as convenient stores, gas stations, and car washes . . . .” (Id. ¶ 40). Plaintiff alleges  
2 that the ordinary purchaser of Plaintiff and Defendants’ products quickly “grab[s]” a  
3 product on “impulse” and could be easily confused by the similarity of the parties’ marks.  
4 (Id. ¶ 41). Plaintiff alleges that Defendants’ “marks and products are infringing upon  
5 Plaintiff Nasser’s marks and products . . . .” (Id. ¶ 6). Plaintiff brings claims against  
6 Defendants for 1) trademark infringement under the federal Lanham Act; and 2) unfair  
7 competition.<sup>1</sup> Plaintiff seeks injunctive relief; damages, including treble damages,  
8 exemplary damages, and punitive damages; and attorneys’ fees and costs.

9 On April 11, 2020, Defendants filed a Motion to Dismiss the Complaint. (ECF No.  
10 10). Defendants move to dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the  
11 Federal Rules of Civil Procedure on the grounds that Plaintiff fails to state a claim upon  
12 which relief can be granted. Defendants further move to dismiss Plaintiff’s Complaint  
13 pursuant to Rule 19 of the Federal Rules of Civil Procedure for failure to join proper parties.  
14 Plaintiff did not file any opposition to the Motion to Dismiss.

## 15 **II. LEGAL STANDARD**

16 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits dismissal for “failure  
17 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In order to state  
18 a claim for relief, a pleading “must contain . . . a short and plain statement of the claim  
19 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule  
20 12(b)(6) “is proper only where there is no cognizable legal theory or an absence of  
21 sufficient facts alleged to support a cognizable legal theory.” *Shroyer v. New Cingular*  
22 *Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quotation omitted).

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25 <sup>1</sup> Plaintiff does not identify whether he brings his unfair competition claim under federal or state law.  
26 Plaintiff also brings a third claim against Defendants for “likelihood of confusion.” (See ECF No. 1 at 7).  
27 Likelihood of confusion is an element of a Lanham Act trademark infringement claim, not a cause of  
28 action. See *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007) (“To prevail on its  
trademark in infringement claim, [the plaintiff] must show that . . . [the defendant’s] use of the mark is  
likely to cause confusion.”); 15 U.S.C. § 1114(1)(a).

1           “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
2 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,  
3 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).  
4 “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
5 court to draw the reasonable inference that the defendant is liable for the misconduct  
6 alleged.” *Id.* (citation omitted). However, “a plaintiff’s obligation to provide the ‘grounds’  
7 of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic  
8 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555  
9 (alteration in original) (quoting Fed. R. Civ. P. 8(a)). A court is not “required to accept as  
10 true allegations that are merely conclusory, unwarranted deductions of fact, or  
11 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.  
12 2001). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual  
13 content, and reasonable inferences from that content, must be plausibly suggestive of a  
14 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
15 2009) (quotation omitted).

### 16 **III. DISCUSSION**

17           Defendants contend that Plaintiff fails to state facts sufficient to state any claim  
18 against individual Defendants Oussama Ellassir and Adnan Ellassir. Defendants contend  
19 that the Complaint “does not provide a clear statement of what occurred, what possible  
20 violation of [Plaintiff’s] rights he is alleging were to have been performed by said  
21 individuals, or what redress [ ] [P]laintiff is seeking against said individuals.” (ECF No. 10  
22 at 3). Defendants further contend that “a ‘d/b/a, other fictitious name, or registered trade  
23 name” is not a proper party subject to this Court’s jurisdiction, so Plaintiff fails to state a  
24 claim against D & J Distributing Manufacturing or Defendant Exotica Fresheners  
25 Corporation. (*Id.* at 4).

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1           **a. Defendants Oussama Elassir, Adnan Elassir, and Exotica Fresheners**  
2           **Corporation**

3           In order to state a claim for trademark infringement under the Lanham Act, the  
4 plaintiff must allege facts that demonstrate that “(1) [the plaintiff] has a valid, protectable  
5 trademark, and (2) that [the defendant’s] use of the mark is likely to cause confusion.”  
6 *Applied Info. Scis. Corp.*, 511 F.3d at 969; see 15 U.S.C. § 1114(1)(a). Claims for unfair  
7 competition under the Lanham Act and under California state law are “substantially  
8 congruent” to claims for trademark infringement under the Lanham Act. *Cleary v. News*  
9 *Corp.*, 30 F.3d 1255, 1262-63 (9th Cir. 1994); see *Brookfield Commcn’s, Inc. v. W. Coast*  
10 *Entm’t Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999) (“To establish a trademark infringement  
11 claim under section 32 of the Lanham Act or an unfair competition claim under section  
12 43(a) of the Lanham Act, [plaintiff] must establish that [defendant] is using a mark  
13 confusingly similar to a valid, protectable trademark of [plaintiff’s].”); *Jada Toys, Inc. v.*  
14 *Mattel, Inc.*, 518 F.3d 628, 632 (9th Cir. 2008) (explaining that claims for trademark  
15 infringement and unfair competition under California law are “subject to the same test”),  
16 superseded by statute on other grounds.

17           In this case, Plaintiff identifies Adnan Elassir as a Defendant in the caption of the  
18 Complaint. However, Plaintiff fails to state any facts regarding Defendant Adnan Elassir.  
19 Plaintiff fails to “plead[ ] factual content that allows the court to draw the reasonable  
20 inference that [Adnan Elassir] is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678  
21 (2009); see *Aaron v. Aguirre*, No. 06-CV-1451-H(POR), 2007 U.S. Dist. LEXIS 16667, at  
22 \*74 n. 6 (S.D. Cal. Mar. 8, 2007) (explaining that “undifferentiated pleading against  
23 multiple defendants is improper” under Rule 12(b)(6)). The Court concludes that Plaintiff  
24 fails to allege facts sufficient to state any claim against Defendant Adnan Elassir.

25           Plaintiff identifies Oussama Elassir d/b/a D & J Distributing Manufacturing as a  
26 Defendant in the caption of the Complaint. “The designation of ‘DBA’ or ‘doing business  
27 as’ simply indicates [defendant] operates under a fictitious business name. Use of a  
28 fictitious business name . . . ‘does not create an entity distinct from the person operating

1 the business.” *Pinkerton’s, Inc. v. Superior Court*, 49 Cal. App. 4th 1342, 1348 (1996)  
2 (quoting *Providence Wash. Ins. Co. v. Valley Forge Ins. Co.*, 42 Cal. App. 4th 1194, 1200  
3 (1996)). Where a plaintiff names as a defendant an individual “doing business as” another,  
4 the defendant in the case is the individual. See *Meller & Snyder v. R & T Props., Inc.*, 62  
5 Cal. App. 4th 1303, 1310-11 (1998) (“R & T Properties, Inc., was not named as a party  
6 defendant in the complaint in this case. The only defendant named in the complaint was an  
7 individual, Mr. Tieger, sued individually, and doing business as R & T Properties . . . . The  
8 trial court correctly concluded when it expunged R & T Properties, Inc., from the judgment,  
9 that the corporation was never named as a proper party.”). Plaintiff alleges that Oussama  
10 Ellassir is an “[a]gent” of D & J Distributing Manufacturing and that Plaintiff sent cease  
11 and desist letters to Oussama Ellassir demanding cessation of the use of the “AROMA  
12 BLAST” and “LOVE ICE” marks. (ECF No. 1 ¶¶ 17, 22). Plaintiff fails to “plead[ ] factual  
13 content that allows the court to draw the reasonable inference that [Oussama Ellassir] is  
14 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (2009).

15 Plaintiff makes several factual allegations against D & J Distributing Manufacturing.  
16 However, Plaintiff fails to allege facts that support an inference that Defendant Oussama  
17 Ellassir would be liable for the actions of D & J Distributing Manufacturing. Although  
18 Plaintiff identifies D & J Distributing Manufacturing as a d/b/a of Oussama Ellassir in the  
19 caption of the Complaint, Plaintiff alleges that D & J Distributing Manufacturing “is a  
20 multi-national corporation . . . .” (ECF No. 1 ¶ 9). The copies of the “AROMA BLAST”  
21 and LOVE ICE” trademark applications that Plaintiff attaches to the Complaint state that  
22 the “owner of the mark[s]” is “D & J Distributing & Manufacturing DBA Exotica  
23 Fresheners”—a “corporation.” (Exs. 4, 8, ECF No. 1 at 33, 55; see *Merco Constr. Eng’rs*  
24 *v. Municipal Court*, 21 Cal. 3d 724, 729 (1978) (“It is fundamental, of course, that a  
25 corporation is a distinct legal entity separate from its stockholders and from its officers.”  
26 (citation and internal quotation marks omitted)). Plaintiff fails to allege facts that support  
27 an inference that Oussama Ellassir would be liable for the actions of the corporation. See  
28 *Automotriz del Galfo de Cal. S.A. de C.V. v. Resnick*, 47 Cal. 2d 792, 796 (1957)



1 (explaining that the corporate entity may be disregarded and alter ego liability applied to  
2 an individual where “(1) [ ] there be such unity of interest and ownership that the separate  
3 personalities of the corporation and the individual no longer exist and (2) [ ] if the acts are  
4 treated as those of the corporation alone, an inequitable result will follow.” (citation  
5 omitted)). The Court concludes that Plaintiff fails to allege facts sufficient to state any  
6 claim against Defendant Oussama Elassir.

7 Plaintiff identifies Exotica Fresheners Corporation as a Defendant in the caption of  
8 the Complaint. Plaintiff alleges that Defendant Exotica Fresheners Corporation is an  
9 “AKA” of D & J Distributing Manufacturing. (See, e.g., ECF No. 1 ¶¶ 9, 14). The copies  
10 of the “AROMA BLAST” and LOVE ICE” trademark applications that Plaintiff attaches  
11 to the Complaint identify “Exotica Fresheners” as a “DBA” of “D & J Distributing &  
12 Manufacturing.” (Exs. 4, 8, ECF No. 1 at 33, 55). Plaintiff fails to allege facts that support  
13 an inference that Defendant Exotica Fresheners Corporation is a legal entity subject to suit.  
14 The Court concludes that Plaintiff fails to allege facts sufficient to state any claim against  
15 Defendant Exotica Fresheners Corporation.

16 **b. D & J Distributing Manufacturing**

17 Rule 10 of the Federal Rules of Civil Procedure requires that the caption of a  
18 Complaint “name all the parties.” Fed. R. Civ. P. 10(a). However, “the question of whether  
19 a defendant is properly in a case is not resolved merely by reading the caption of a  
20 complaint.” *Rice v. Hamilton Air Force Base Commissary*, 720 F.2d 1082, 1085 (9th Cir.  
21 1983) (citation omitted). “[T]he determination of whether or not a defendant is properly in  
22 the case hinges upon the allegations in the body of the complaint and not upon his inclusion  
23 in the caption.” *Hoffman v. Halden*, 268 F.2d 280, 304 (9th Cir. 1959), overruled on other  
24 grounds by *Cohen v. Norris*, 300 F.2d 24 (9th Cir. 1962). A complaint is subject to  
25 dismissal if “one cannot determine from the complaint who is being sued, for what relief,  
26 and on what theory . . . .” *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996).

27 In this case, Plaintiffs names three Defendants in the caption of the Complaint:  
28 Oussama Elassir d/b/a D & J Distributing Manufacturing; Adnan Elassir; and Exotica

1 Fresheners Corporation. In the “Parties” section of the Complaint, Plaintiff identifies only  
2 one “Defendant:” “D & J Distributing Manufacturing (AKA Exotica Fresheners) . . . .”  
3 (ECF No. 1 ¶ 9). Plaintiff alleges that D & J Distributing Manufacturing “is a multi-national  
4 corporation . . . .” (Id.). Plaintiff alleges that D & J Distributing Manufacturing applied for  
5 trademarks for “AROMA BLAST” and “LOVE ICE.” The copies of the “AROMA  
6 BLAST” and LOVE ICE” trademark applications that Plaintiff attaches to the Complaint  
7 state that the “owner of the mark[s]” is “D & J Distributing & Manufacturing DBA Exotica  
8 Fresheners.” (Exs. 4, 8, ECF No. 1 at 33, 55). Plaintiff alternates between making  
9 allegations against “Defendants,” “Defendant,” and D & J Distributing Manufacturing.  
10 (Compare ECF No. 1 ¶ 4 (“Defendant has begun to [ ] produce air fresheners whose mark  
11 bears a strong resemblance to Plaintiff Nasser’s.”), with ECF No. 1 ¶ 27 (“Defendant D &  
12 J Distributing Manufacturing (AKA Exotica Fresheners) marks, AROMA BLAST and  
13 LOVE ICE, directly infringes on Plaintiff Nasser’s A BLAST OF FRESHNESS, AMOR  
14 LOVE AMOUR, marks respectively.”), and ECF No. 1 ¶ 35 (“Defendants’ use of  
15 confusingly similar iterations of Plaintiff Nasser’s marks . . . is likely to cause confusion,  
16 deception and mistake by creating the false and misleading impression that Defendants’  
17 goods are manufactured or distributed by Plaintiff Nasser . . . .”). The Court concludes that  
18 “one cannot determine from the complaint who is being sued, for what relief, and on what  
19 theory . . . .” McHenry, 84 F.3d at 1178; see *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th  
20 Cir. 1992) (affirming dismissal of action based on failure to comply with court order that  
21 complaint be amended to name all defendants in caption as required by Rule 10(a)).

22 Defendants’ Motion to Dismiss the Complaint is granted. Plaintiff’s Complaint is  
23 dismissed without prejudice.

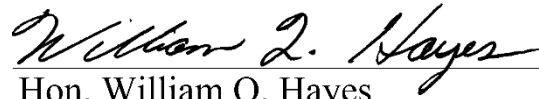
#### 24 **IV. CONCLUSION**

25 IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss the Complaint  
26 (ECF No. 10) is granted. Plaintiff’s Complaint is dismissed without prejudice. Any motion  
27 for leave to amend shall be filed within thirty (30) days from the date of this Order and  
28 comply with all Federal and Local Rules. Any proposed amended complaint shall “name



1 all parties” in the caption in accordance with Rule 10 of the Federal Rules of Civil  
2 Procedure.

3 Dated: July 30, 2020



Hon. William Q. Hayes  
United States District Court

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