

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-01306-REB-KLM

SALBA CORP., N.A., a Canadian corporation,
SALBA SMART NATURALS PRODUCTS, a Colorado limited liability company,
WILLIAM A. RALSTON, and
RICHARD L. RALSTON,

Plaintiffs,
v.
X FACTOR HOLDINGS, LLC, an inactive Florida limited liability company, and
ANCIENT NATURALS, LLC, a Florida limited liability company,
Defendants.

ORDER GRANTING MOTION TO AMEND COMPLAINT

Blackburn, J.

This matter is before me on the **Motion for Leave To Amend Complaint and Caption** [#44]¹ filed by the plaintiffs on December 13, 2013. The defendants filed a response [#58], and the plaintiffs filed a reply [#59]. I grant the motion.

Under Fed. R. Civ. P. 15(a), a court should grant leave to amend freely when justice so requires. Amendments generally are allowed except where well-defined exceptions apply. The most notable exceptions are considered when there is a showing of undue delay, undue prejudice to the opposing party, or when the amendment would be futile.

See, e.g., Castleglen, Inc. v. Resolution Trust Corp., 984 F.2d 1571, 1585 (10th Cir. 1993).

¹ “[#44]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

This case concerns disputes over the defendants' use of trademarks and other materials related to the use of the name Salba in relation to the sale of chia seeds and related products. In the current complaint [#1], the plaintiffs assert claims for (1) trademark counterfeiting and infringement; (2) federal unfair competition and false advertising; (3) deceptive trade practices; (4) cyber-squatting; and (5) common law trademark infringement and unfair competition. These claims are brought against defendants X Factor Holdings, LLC and Ancient Naturals, LLC. The parties reached a settlement and, in early March 2013, executed a Settlement Agreement and Release. [#45-9], CM/ECF pp. 2 - 67.

Presently, the plaintiffs contend that the defendants have violated the terms of the settlement agreement and that three additional putative defendants have violated the settlement agreement. The three proposed additional defendants are associated with the two current defendants. Given these contentions, the plaintiffs now seek to amend their complaint to assert their original claims and to add seven additional claims, all related to the trademarks, trade dress, and copyrights associated with the name Salba and the settlement agreement.

In response, the defendants contend the plaintiffs are seeking to amend their complaint long after the expiration of the deadline for joinder of the parties and amendment of the pleadings. In that circumstance, the defendants contend, the plaintiffs must show good cause for their proposed tardy amendment. Notably, the deadline for joinder of parties and amendment of pleadings was amended in the **Second Scheduling Order** [#50] filed December 17, 2013. That deadline now is January 31, 2014. The defendants argue also that the motion to amend should be denied because the plaintiffs have delayed their proposed amendment unduly.

According to the defendants, the plaintiffs have not shown that the plaintiffs did not know and could not have known long ago facts sufficient to support the claims of the plaintiffs seek to assert against the proposed additional defendants. The plaintiffs assert that they did not discover most of the alleged violations of the settlement agreement until early December 2013. The motion to amend was filed December 13, 2013.

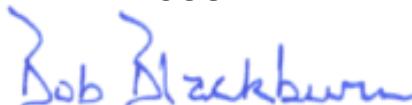
Given these circumstances, I find and conclude that the plaintiffs have not delayed unduly their effort to amend the complaint, that there will be no undue prejudice to the defendants and proposed additional defendants if the amendment is permitted, and that there is no basis to conclude that the amendment would be futile. Thus, I grant the motion to amend.

THEREFORE, IT IS ORDERED as follows:

1. That after consultation with the magistrate judge, the memorandum [#47] referring the **Motion for Leave To Amend Complaint and Caption** [#44] filed December 13, 2013, to the magistrate judge is **WITHDRAWN**;
2. That the **Motion for Leave To Amend Complaint and Caption** [#44] filed December 13, 2013, is **GRANTED**; and
3. That by January 27, 2014, the plaintiffs **SHALL FILE** their amended complaint as shown in Exhibit 1 [#44-1 to 44-5] to the **Motion for Leave To Amend Complaint and Caption** [#44].

Dated January 13, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge