

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EDGEWELL PERSONAL CARE :  
BRANDS, LLC, :  
: Plaintiff, :  
v. : : Civil Action No. 15-1188-RGA  
: :  
ALBAAD MASSUOT YITZHAK, LTD, :  
and ALBAAD USA, INC. :  
: Defendants. :

**MEMORANDUM ORDER**

“There is no there there.” (D.I. 68, p.5). This is Defendants’ characterization of Plaintiff’s Count III of the Second Amended Complaint. (D.I. 48). Defendants also use the more lawyerly characterization that the Count fails to state a claim upon which relief could be granted. Plaintiff, while not using the same words, characterizes Defendants’ motion the same way – “a simple amendment to the [Second Amended Complaint] attaching [already-produced] claim charts clearly would satisfy the pleading standard.” (D.I. 62, pp. 10-11).

Defendants are right in their characterization of Count III, and Plaintiff is certainly right that it should be given the opportunity to amend its complaint, although I am not expressing any opinion how Plaintiff should do that. I decline to convert the Rule 12 motion into a Rule 56 motion.

Thus, Defendants’ motion (D.I. 54) is **GRANTED**. Count III is **DISMISSED** without

prejudice. Plaintiff is **GIVEN** ten days to file a complaint amended as to Count III.

IT IS SO ORDERED this 20 day of January 20017.

Richard G. Andrews  
United States District Judge