UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DINESH PATEL,

Plaintiff

v.

PAL USA, INC. and PALTRONICS AUSTRALASIA, PTY LTD.,

Defendants

Case No.: 2:24-cv-00536-APG-EJY

Order Granting in Part Defendants' Motion to Dismiss and Denying Plaintiff's Motion for Judicial Notice

[ECF Nos. 11, 16]

Dinesh Patel sues Pal USA, Inc. and Paltronics Australasia, Pty Ltd. for Lanham Act violations and other claims arising out of a trademark dispute. Patel is president and owner of BatchTest Corporation, a California company that designs and sells software used in a variety of business technologies, including point-of-sale (POS) systems. ECF No. 1 at 2, 4. Through an assignment from BatchTest, Patel owns two trademarks for software marketed under the mark "PEBBLES" and has applications with the United States Patent and Trademark Office (USPTO) for additional trademarks for "PEBBLE." *Id.* at 5-9. Paltronics is an Australian software company. *Id.* at 4. Pal USA is a Nevada corporation and fully owned subsidiary of Paltronics. *Id.* at 4. Pal USA has attempted to register several marks such as "PEBBLE" and "PEBBLE POS" for use in software and business applications. *Id.* at 11-13. Patel has contested these applications with the USPTO, arguing they infringe on his marks. *Id.* at 14, 17. Pal USA also registered the internet domain PEBBLEPOS.COM, which automatically redirects visitors to Pal USA's website. *Id.* at 14-15. Patel asserts that his marks are senior and the defendants' use of similar marks on similar products infringe his trademark rights. ECF No. 1 at 22. After unsuccessful attempts to resolve the dispute, Patel filed this lawsuit. *Id.* at 23.

Paltronics moves to dismiss for insufficient service of process, lack of personal jurisdiction, and failure to state a claim. Pal USA moves to dismiss only Patel's claims for unjust enrichment and cybersquatting. Patel responds that service was proper, Paltronics is subject to personal jurisdiction and liability because Pal USA is its alter ego, and he has properly pleaded his claims. Patel also requests that I take judicial notice of several exhibits. For the reasons below, I grant Paltronics's motion to dismiss, deny Pal USA's motion to dismiss, and deny Patel's motion for judicial notice. I grant Patel leave to amend and additional time to properly serve Paltronics.

I. DISCUSSION

A. Judicial Notice

Patel moves for me to take judicial notice of several exhibits attached to his complaint and response. These exhibits include Pal USA's incorporation records with the Nevada Secretary of State and archived internet screenshots of Pal USA's website at various points in time. The defendants argue that I should deny the motion because there is no need to take judicial notice of Pal USA's business registration now that it has accepted service, and because they dispute the accuracy of the archived internet sources.

Federal Rule of Evidence 201(b) allows me to judicially notice "a fact that is not subject to reasonable dispute" because it either "(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Because the defendants contest the accuracy of these sources, I elect not take judicial notice of them at this time. But I will consider Patel's exhibits for the limited purpose of determining whether Paltronics is subject to personal jurisdiction. I therefore deny Patel's motion for judicial notice.

B. Service of Process

Patel hired a process server to deliver the complaint and summons at Pal USA's registered address in Las Vegas, Nevada, where the server left the complaint with a receptionist. ECF Nos. 9; 10. According to Terri Cooper, who is Pal USA's president and registered agent for service of process, as well as Paltronics's CEO, the receptionist works for a third-party company that manages the cooperative workplace containing Pal USA's office, and the receptionist is not authorized to accept service on behalf of either Pal USA or Paltronics. ECF Nos. 11-1 at 1-2; 16-1 at 5-6. Patel later mailed a copy of the complaint and summons to Pal USA's Nevada address as well. ECF No. 19 at 1.

Both Pal USA and Paltronics argue that Patel's service of a nonemployee receptionist was insufficient service of process under Federal Rule of Civil Procedure 4. Pal USA concedes, however, that Patel properly served it under Rule 4(h)(1)(B) when Patel also mailed a copy of the complaint on May 14, 2024 to the office that Pal USA registered with the Nevada Secretary of State. ECF No. 19 at 1-2.[1] I therefore deny as moot the motion to dismiss for improper service as to Pal USA.

But Paltronics maintains that service on its subsidiary is insufficient to serve it, and Patel must comply with the Hague Convention on Service Abroad. Patel responds that his service on Pal USA, of which Cooper is the President and registered agent for service, is effectively service on Paltronics because Cooper is also the CEO of Paltronics, and she was present and available for service in Nevada.

[1] Patel argues that the defendants' motion to dismiss is untimely because he properly served Pal USA when his process server left the complaint with the receptionist on April 23. He cites to my May 15 minute order setting the briefing schedule to argue that the defendants' motion to dismiss was untimely. The motion to dismiss, however, was filed on May 14, which would be timely even if service was proper on April 23. *See* ECF No. 11.

A corporation must be served in the United States either in the same manner as serving an individual, or "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant." Fed R. Civ. P. 4(h)(1). A corporation not within the United States must be served "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery." Fed. R. Civ. P. 4(h)(2). An individual in a foreign country may be served "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Fed. R. Civ. P. 4(f)(1).

Patel argues that he satisfied Rule 4(h)(1)(B) by serving Pal USA and, by extension, Cooper. Cooper is Paltronics's CEO so, Patel argues, he has served an officer of Paltronics. But Patel did not serve Cooper individually, he served the address listed for Pal USA's registered agent. And although Cooper is Pal USA's registered agent, she is not Paltronics's registered agent in the United States. Patel argues that *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988) held that a party could serve a foreign company through its domestic subsidiary or agent. But that case applied the Illinois long-arm statute, which allowed service on a domestic subsidiary without sending documents abroad. *Id.* at 706. Nevada's long-arm statute does not have a similar provision. *See* Nev. Rev. Stat. § 14.065. Patel must thus comply with the international requirements for serving Paltronics in Australia under Rule 4(f)(1).

Patel has not sufficiently served Paltronics. I therefore grant Paltronics's motion to dismiss for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5).

However, I grant Patel additional time to serve Paltronics. Because I am granting Patel additional time to serve Paltronics, I address Paltronics's other arguments for dismissal.

C. Personal Jurisdiction

Paltronics moves to dismiss for lack of personal jurisdiction under Rule 12(b)(2) because it is neither incorporated nor headquartered in Nevada, and because the complaint does not allege Paltronics has sufficient contacts with Nevada. Patel responds that Paltronics is subject to general jurisdiction because Pal USA is Paltronics's alter ego, and because Paltronics is engaged in business in Nevada through its subsidiary.

"When no federal statute governs personal jurisdiction, the district court applies the law of the forum state." *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Nevada's long-arm statute is co-extensive with federal standards, so I may exercise personal jurisdiction if doing so comports with federal constitutional due process. Nev. Rev. Stat. § 14.065(1); *Walden v. Fiore*, 571 U.S. 277, 283 (2014). "There are two forms of personal jurisdiction that a forum state may exercise over a nonresident defendant—general jurisdiction and specific jurisdiction." *Boschetto*, 539 F.3d at 1016.

1. General Jurisdiction

General jurisdiction over a foreign corporation is proper only when the corporation's affiliations with the State "are so continuous and systematic as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (simplified). Outside of exceptional cases, a corporation is at home where it is incorporated or has its principal place of business. *Ford Motor Co. v. Mont. Eighth Jud. Ct.*, 592 U.S. 351, 359 (2021). Paltronics is both incorporated and headquartered in Australia. The complaint does not describe Paltronics acting in Nevada other than owning its subsidiary, Pal USA.

To overcome this fact, Patel argues that Pal USA is Paltronics's alter ego. If Patel can establish this alter ego relationship, it may justify conferring personal jurisdiction over the parent company through the subsidiary. *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996). To satisfy the alter ego test, Patel "must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015) (simplified). The first prong of this test requires Patel to show that Paltronics controls Pal USA "to such a degree as to render the latter the mere instrumentality of the former." *Id.* (quotation omitted).

Patel has not alleged a prima facie case that Pal USA is Paltronics's alter ego. Patel argues that Pal USA is Paltronics's fully owned subsidiary, Cooper and others serve as officers in both companies, Cooper appears to be the only Pal USA employee in the United States, Pal USA's website links to an Australian gambling assistance page, Paltronics's website boasts about use of its products in Las Vegas, and both Pal USA and Paltronics hired the same Australian company to design their websites. These facts are insufficient. "[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts." *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) (quotation omitted). And Patel does not plausibly allege that Pal USA is undercapitalized, that the two entities do not keep adequate records, that they do not observe corporate formalities, or that Paltronics freely transfers Pal USA's assets, "all of which would be signs of a sham corporate veil." *Ranza*, 793 F.3d at 1074.

Because Patel has not demonstrated a sufficient "unity of interest and ownership," I need not examine the "fraud or injustice" prong of the alter ego analysis. *Id.* at 1075 n.9. Patel has not

established that Pal USA is the alter ego of Paltronics, so he cannot sue Paltronics in Nevada under general jurisdiction.

2. Specific Jurisdiction

Specific jurisdiction depends on an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). In contrast with general jurisdiction, "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* (quotation omitted). "For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least minimum contacts with the relevant forum such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quotation omitted). I apply a three-prong test to determine whether specific jurisdiction exists: (1) the defendant "must have performed some act or consummated some transaction with the forum by which it purposefully availed itself of the privilege of conducting business" in the forum state; (2) the plaintiff's claims "must arise out of or result from [those] forum-related activities; and (3) the exercise of jurisdiction must be reasonable." *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).

"Purposeful availment requires that the defendant engage in some form of affirmative conduct allowing or promoting the transaction of business within the forum state." *Doe v. Am. Nat. Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997) (quotation omitted). "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other

persons affiliated with the state." *Walden*, 571 U.S. at 286 (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Paltronics lacks the minimum contacts necessary for personal jurisdiction over it. Patel provides various internet screenshots that he claims support specific jurisdiction:

(1) an online market describes Paltronics as the developer of a Pebble POS software but links to Pal USA's website to purchase the software,

(2) Paltronics's website links to Australian media coverage of its casino products and to the Pal USA website,

(3) Pal USA's website has a link for an Australian gambling addiction help website, and

(4) both Pal USA and Paltronics used the same web developer for their websites.

These activities are all consistent with a foreign corporation owning a domestic subsidiary, but none of the allegations in the complaint describes Paltronics, rather than its subsidiary Pal USA, marketing or selling any products in Nevada. The allegedly infringing products are all sold by Pal USA, which has applied for U.S. trademarks, and Patel acknowledges that Paltronics does not own any foreign trademark applications under "PEBBLE" or "PEBBLES." ECF No. 1 at 23. "[T]he fact that a parent company is closely associated with a subsidiary that itself has minimum contacts is insufficient to establish personal jurisdiction." *Cox v. CoinMarketCap OPCO, LLC*, 112 F.4th 822, 835 (9th Cir. 2024) (quotation omitted).

Patel has not plausibly alleged either general jurisdiction through an alter ego theory or specific jurisdiction through Paltronics purposefully availing itself of Nevada law. I therefore grant Paltronics's motion to dismiss for lack of personal jurisdiction. I grant Patel leave to amend his complaint if he can allege additional facts to establish personal jurisdiction over Paltronics in this case.

D. Failure to State a Claim

In considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), I take all well-pleaded allegations of material fact as true and construe the allegations in a light most favorable to the non-moving party. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1096 (9th Cir. 2017). However, I do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1163 (9th Cir. 2017). A plaintiff must also make sufficient factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when the complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When the claims have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

1. Paltronics

Paltronics argues that the complaint does not attribute any of the infringing behavior to it, only to its subsidiary, Pal USA. Patel responds that the complaint's allegations are against "defendants," which applies to both companies, and that Paltronics is liable through an alter ego theory. As discussed in the personal jurisdiction section above, Patel has not plausibly alleged an alter ego relationship between Paltronics and Pal USA. To the extent he levies his allegations against "defendants" more broadly, his exhibits show the allegedly infringing marks being marketed and sold by Pal USA.[2] I therefore grant Paltronics's motion to dismiss Patel's claims

[2] *See e.g.*, ECF No. 1 at 127, 132, 137, 141 (trademark applications made under Pal USA); *id.* at 150-56 (Pebble POS sold on Pal USA's website); ECF 16-1 at 12 (online market links to Pal USA's website for Pebbles products); *id.* at 18 (Paltronics's website links to Pal USA's website to sell casino products).

against it but grant him leave to amend if he is able to allege facts to support either direct liability against Paltronics or an alter ego theory.

2. Pal USA

Pal USA moves to dismiss only counts five and six against it, which allege unjust enrichment and cybersquatting. Pal USA does not challenge Patel's other claims as insufficiently pleaded.

i. Unjust Enrichment (Claim 5)

Pal USA argues that an unjust enrichment claim that merely restates other claims fails as a matter of law. Patel responds that his complaint alleges sufficient facts for all of his claims.

Unjust enrichment requires Patel to plausibly allege (1) he conferred a benefit on Pal USA, (2) Pal USA appreciated that benefit, (3) Pal USA accepted and retained the benefit, and (4) under the circumstances, it would be inequitable for Pal USA to retain the benefit without payment. *Leasepartners Corp. v. Robert L. Brooks Trust*, 942 P.2d 182, 187 (Nev. 1997). Pal USA argues that unjust enrichment cannot be based on the same facts as a trademark infringement claim, relying on *Gearsource Holdings, LLC v. Google LLC*, No. 18-cv-03812-HSG, 2020 WL 3833258, at *13 (N.D. Cal. July 8, 2020). In that case, however, the court was applying the rule under California law that an "unjust enrichment claim that restates a trademark infringement claim, without alleging any quasi-contractual relationship, fails as a matter of law." *Id.* Pal USA has not identified a similar rule in Nevada. Additionally, Patel is entitled to plead alternative theories of recovery. Fed. R. Civ. P. 8(d); *see also Caldwell v. Compass Ent. Grp.*, LLC, No. 2:12-cv-00458-APG-GWF, 2014 WL 202039, at *5 (D. Nev. Jan. 14, 2014) (acknowledging that parties may plead in the alternative, but denying a portion of the unjust

enrichment claim based on trademark because plaintiff did not own the trademark). Thus, I deny Pal USA's motion to dismiss Patel's unjust enrichment claim.

ii. Cybersquatting (Claim 6)

Pal USA argues that Patel has not alleged any facts to plausibly support a claim of cybersquatting. The Anticybersquatting Consumer Protection Act (ACPA) prohibits registering internet domain names that are identical or confusingly similar to registered service marks and trademarks. *See* 15 U.S.C. § 1125(d)(1). To bring a claim under the ACPA, Patel must plausibly allege (1) Pal USA registered a domain name, (2) that was identical or confusingly similar to a mark that was distinctive at the time of registration, and (3) bad faith intent at the time of registration. *Id.*; *GoPets Ltd. v. Hise*, 657 F.3d 1024, 1030 (9th Cir. 2011).

Here, Patel alleges that Pal USA registered the domain name for "PEBBLEPOS.COM." ECF No. 1 at 29. He alleges that this domain name is confusingly similar to his distinctive PEBBLES mark, and that Patel used the distinctive mark prior to Pal USA's registration of the domain. *Id.* at 29-30. He also alleges that the defendants use the website to advertise similar goods and services, and that prior to the defendants applying for a trademark they were aware of Patel's PEBBLE-branded goods and services. *Id.* at 13, 29-30. And Patel alleges that PEBBLEPOS.COM automatically redirects visitors to Pal USA's website where it sells similarly branded products. *Id.* at 15. Bad faith intent at the time of registration is reasonably inferred from the complaint's allegations that Pal USA's "actions were and are willful, knowing, and intended to cause confusion, to cause mistake, or to deceive." *Id.* at 25. "Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). Because Patel has plausibly alleged all elements of a cybersquatting claim, I deny Pal USA's motion to dismiss.

II. CONCLUSION

I THEREFORE ORDER that defendants Paltronics Australasia, Pty Ltd. and Pal USA, Inc.'s motion to dismiss (**ECF No. 11**) **is GRANTED in part**. I dismiss plaintiff Dinesh Patel's claims against Paltronics Australasia, Pty Ltd. without prejudice. Plaintiff Dinesh Patel may amend his complaint by December 31, 2024. He may serve Paltronics Australasia, Pty Ltd.by February 28, 2025. If Patel does not amend or serve Paltronics Australasia, Pty Ltd. by these dates, this case will proceed with only his claims against Pal USA.

I FURTHER ORDER that plaintiff Dinesh Patel's motion to take judicial notice (**ECF No. 16**) **is DENIED**.

DATED this 2nd day of December, 2024.

ANDREW P. GORDON
CHIEF UNITED STATES DISTRICT JUDGE