

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

INFUSION, INC., a Michigan corporation,

Plaintiff,

vs.

Case No. 12-10712-CKB

HON. CHRISTOPHER P. YATES

OLIVIA GONZALES, an emancipated minor individual; DOMINIQUE GONZALES an individual; GUADALUPE GONZALES, an individual and former guardian of Olivia Gonzales; DAVID GONZALES, an individual; CHACHIMOMMA, INC., an unincorporated company; and CHACHI GONZALES LLC, an unincorporated company,

Defendants,

and

GUADALUPE GONZALES, an individual; and CHACHIMOMMA, INC., an unincorporated company,

Cross-Plaintiffs,

vs.

OLIVIA GONZALES, an emancipated minor; and DOMINIQUE GONZALES, an individual,

Cross-Defendants.

OPINION AND ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

On September 5, 2013, the Court issued a preliminary injunction that restrained and enjoined the defendants from selling any clothing in direct competition with the Chachimomma line produced by Plaintiff Infusion, Inc. (“Infusion”) under the terms of an exclusive licensing agreement. But at

the end of 2013, that exclusive licensing agreement expired, stripping Infusion of its exclusive right to produce Chachimomma clothing and converting Defendants Guadalupe and David Gonzales into the aggressors in this litigation. When Infusion not only continued selling Chachimomma clothing after January 1, 2014, but also launched a new product line called rul9, Guadalupe Gonzales and her entity, Chachimomma, Inc.,¹ moved for the entry of a temporary restraining order to prevent Infusion from selling Chachimomma and rul9 clothing. The Court conducted an evidentiary hearing for the purpose of considering the propriety of an injunction. Based upon the record from that hearing, the Court shall deny the request by Guadalupe Gonzales and Chachimomma, Inc., for injunctive relief.

I. Factual Background

The Court has twice recounted the facts of this case in written opinions, so a brief recitation of the background should suffice. Defendant Olivia Gonzales found fame and fortune when she and her dance crew, “IaM.mE,” won “America’s Best Dance Crew: Season 6.” Olivia Gonzales garnered notoriety not only for her extraordinary ability as a dancer, but also for her unique style of clothing, which her mother, Defendant Guadalupe Gonzales, designed. As a result, her mother began to mass-produce and sell that clothing under the name Chachimomma. See First Amended Complaint, ¶ 19. When her mother was unable to keep up with the demand for Chachimomma clothing, the Gonzales family entered into negotiations with Plaintiff Infusion. See id., ¶¶ 19-21. Then, on January 9, 2012, Olivia Gonzales, Chachimomma, and Infusion entered into an exclusive licensing agreement that bears the signatures of Olivia and Guadalupe Gonzales. See id., Exhibit 1.

¹ The status of Defendant Chachimomma, Inc., is shrouded in mystery. Although the entity has been named by Plaintiff Infusion as a defendant in this litigation, the pleadings refer to the entity as “an unincorporated company.” Thus, the Court cannot readily ascertain whether the entity even exists as a matter of law, much less whether it can sue and be sued.

Pursuant to the terms of the licensing agreement, Plaintiff Infusion began making and selling clothing in 2012, see First Amended Complaint, ¶ 28, and paying the Gonzales family \$10,000 each month for the exclusive right to manufacture and sell Chachimomma products. Id., ¶ 25. Initially, the parties worked well together, but in time disputes arose about the Gonzales family’s compliance with their obligations under the licensing agreement. See id., ¶¶ 29-31. To make matters worse, Olivia Gonzales and her sister, Defendant Dominique Gonzales, had a falling-out with their parents. Consequently, Infusion began making the monthly \$10,000 payments into an escrow account, which has resulted in the accumulation of a substantial amount of money in escrow. See id., ¶ 40.

On November 16, 2012, Plaintiff Infusion filed suit against Olivia Gonzales, her mother, her father, her sister Dominique, and Chachimomma, Inc. Then, on September 5, 2013, the Court issued a preliminary injunction barring the defendants “from marketing and selling clothing in competition with the ChachiMomma line produced by Infusion[.]” See Opinion and Order Granting Preliminary Injunction at 9 (Sept 5, 2013). That injunction expired by its own terms on January 1, 2014, when the exclusive licensing agreement ran its course. From that point forward, Infusion continued selling off its existing inventory of Chachimomma clothing and simultaneously launched a new brand under the name rul9. This prompted Defendants Guadalupe Gonzales and Chachimomma, Inc., to move for an injunction blocking Infusion’s sales of Chachimomma products and rul9 pants.

II. Legal Analysis

In seeking an injunction, Guadalupe Gonzales and Chachimomma, Inc., bear “the burden of establishing that a preliminary injunction should be issued[.]” See MCR 3.310(A)(4). An injunction “represents an extraordinary and drastic use of judicial power that should be employed sparingly

and only with full conviction of its urgent necessity.” See Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Our Court of Appeals “has identified four factors to consider in determining whether to grant a preliminary injunction.” Id. Those four factors are as follows:

- (1) the likelihood that the party seeking the injunction will prevail on the merits,
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is issued.

Davis, 296 Mich App at 613. In analyzing these four considerations, the Court must bear in mind that injunctive relief is only appropriate if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614.

A. Likelihood of Success on the Merits.

The request for a preliminary injunction filed by Guadalupe Gonzales and Chachimomma, Inc., rests upon three theories: breach of contract; unfair competition/palming off; and violation of the Michigan Uniform Trade Secrets Act (“MUTSA”), MCL 445.1901, *et seq.* The claim for breach of contract seems like a reed too slender to support injunctive relief. Section 6(a) of the exclusive licensing agreement states that, upon termination of the agreement, Plaintiff Infusion “shall have the authority to carry out and/or sell any Licensed Products and/or inventory that was contracted, paid for, produced, partially produced as work in progress, or ordered prior to termination” of the parties’ agreement “for a period of 12 months following termination.” See Hearing Exhibit A (Exclusive Licensing Agreement, § 6(a)). This provision, which fits the current situation like a glove, permits Infusion to sell off its entire inventory of Chachimomma clothing as long as Infusion does so by the end of 2014. Guadalupe Gonzales and Chachimomma, Inc., contest this proposition based upon the

assertion that Infusion has somehow cheated by stockpiling inventory in anticipation of the end of the exclusive licensing period, but the parties' agreement includes no reference to the requirement that Guadalupe Gonzales and Chachimomma, Inc., have fashioned out of whole cloth. Because the Court must enforce the parties' contract as written, see Rory v Continental Ins Co, 469 Mich 362, 375 (2003), the Court finds no basis for the stockpiling argument advanced by Guadalupe Gonzales and Chachimomma, Inc.²

Guadalupe Gonzales and Chachimomma, Inc., next argue that Plaintiff Infusion is engaging in unfair competition and palming off goods by marketing pants under Infusion's new rul9 brand that are quite similar to Chachimomma pants. "Unfair competition ordinarily consists in the simulation by one person, for the purpose of deceiving the public, of the name, symbols, or devices employed by a business rival, or the substitution of the goods or wares of one person for those of another, thus falsely inducing the purchase of his wares and thereby obtaining for himself the benefits properly belonging to his competitor." Moon Bros, Inc v Moon, 300 Mich 150, 162 (1942). "The rule is generally recognized that no one shall by imitation or unfair device induce the public to believe that the goods he offers for sale are the goods of another, and thereby appropriate for himself the value of the reputation which the other has acquired for his own product or merchandise." Id. The pants sold by Infusion under the name rul9 look strikingly similar to the Chachimomma pants produced by Guadalupe Gonzales, but Infusion clearly is not attempting to pass off its pants as creations of the

² Even if the Court could rely upon the stockpiling theory, the evidence does not support the contention that Plaintiff Infusion intentionally stockpiled Chachimomma clothing. The testimony of Brent Hawkins establishes that Infusion merely ordered enough material in December of 2013 to prepare for the anticipated Christmas-shopping rush. By December 31, 2013, Infusion had roughly 12,500 pairs of Chachimomma pants in inventory, and Infusion has since sold more than 5,000 of those pairs of pants, so Infusion retains a relatively small inventory of approximately 7,500 pairs of Chachimomma pants.

Chachimomma producers. To the contrary, Infusion has chosen a brand name – rul9 – that bears no similarity whatsoever to Chachimomma. Thus, Guadalupe Gonzales and Chachimomma, Inc., are unlikely to succeed on the merits of their unfair-competition claim.

Finally, Guadalupe Gonzales and Chachimomma, Inc., contend that Plaintiff Infusion’s sale of its rul9 pants runs afoul of the MUTSA, MCL 445.1901, *et seq.* To be sure, the Court “can enjoin actual or threatened misappropriation of a trade secret and can also compel affirmative acts necessary to protect a trade secret.” CMI Int’l, Inc v Internet Int’l Corp, 251 Mich App 125, 132 (2002). But the MUTSA defines a “trade secret” as follows:

- (d) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:
 - (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
 - (ii) Is the subject of efforts that are reasonable under the circumstances to maintain secrecy.

See MCL 445.1902(d). In their amended counterclaims, Guadalupe Gonzales and Chachimomma, Inc., allege that their “customer lists and information, supplier information, patterns, ideas, creative works, and related materials . . . are trade secrets as defined in the” MUTSA. See First Amended Counterclaims Against Infusion, Inc., ¶ 183. Customer lists and supplier information, however, do not constitute trade secrets in circumstances such as this. See Hayes-Albion Corp v Kuberski, 421 Mich 170, 183-184 (1984) (applying common law of trade secrets). And although the pattern for Chachimomma pants could arguably be characterized as a potential trade secret, a seamstress could easily fashion a similar pattern simply by inspecting a pair of Chachimomma pants that are “readily ascertainable by proper means[.]” See MCL 445.1902(d)(i). Consequently, the customer lists, the supplier information, and the similar (although not exact) patterns seem unlikely to qualify as trade

secrets, so Guadalupe Gonzales and Chachimomma, Inc., appear unlikely to succeed on their claim under the MUTSA. As a result, Guadalupe Gonzales and Chachimomma, Inc., have not advanced a single counterclaim on which they are likely to succeed against Infusion.³

B. Irreparable Harm.

Under Michigan law, Guadalupe Gonzales and Chachimomma, Inc., must support the request for an injunctive order with a showing that ““there exists a real and imminent danger of irreparable injury.”” Davis, 296 Mich App at 614. “A relative deterioration of competitive position does not in itself suffice to establish irreparable injury.” Thermatool Corp v Borzym, 227 Mich App 366, 377 (1998). Accordingly, Plaintiff Infusion’s mere presence in the marketplace cannot justify injunctive relief. More importantly, “a preliminary injunction should not issue where an adequate legal remedy is available.” Pontiac Fire Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 9 (2008). Here, if the Court finds in favor of Guadalupe Gonzales and Chachimomma, Inc., with regard to the ability of Infusion to sell its rul9 pants, the Court will be able to establish damages in the form of the stream of revenue realized by Infusion as a result of the impermissible sales. Accordingly, injunctive relief need not be awarded to Guadalupe Gonzales and Chachimomma, Inc., because the Court can fashion a legal remedy for them if they prevail against Infusion. See id.

³ Guadalupe Gonzales and Chachimomma, Inc., seem to seek patent-like protection for their Chachimomma pants, but they have not pleaded a patent claim. Indeed, the Court almost certainly could not entertain such a claim in the Michigan state-court system. The United States Constitution grants Congress power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries[.]” See US Const, art I, § 8, cl 8. This authority ensures that the national government maintains control over the patent process. See Golan v Holder, 132 S Ct 873, 887-888 (2012). In aid of its power in this regard, Congress has enacted a statute – 28 USC § 1338 – that vests exclusive jurisdiction over all matters involving patents in the federal courts. See Christianson v Colt Industries Operating Corp, 486 US 800, 807 (1988).

C. Balance of Harms.

In weighing the relative harm to the opposing parties in the presence or absence of injunctive relief, see Davis, 296 Mich App at 613, the Court must be mindful of the consequences of its ruling. If the Court enjoins Plaintiff Infusion from selling its remaining inventory of Chachimomma pants or its collection of rul9 products, Infusion will essentially be compelled to discard a large volume of clothing, resulting in substantial economic waste. In contrast, denying injunctive relief will allow the sales of those items, yielding a significant revenue stream for Infusion or, in the alternative, for Guadalupe Gonzales and Chachimomma, Inc., if they prevail on their counterclaims. Accordingly, the balance of harms militates decisively against injunctive relief.

D. Harm to the Public Interest.

The Court cannot conclude that significant harm will befall the buying public in the absence of injunctive relief. To be sure, allowing competitors to sell products where there exists a likelihood of confusion may harm the consumers who buy a product only to have their expectations unfulfilled. But in this case, Plaintiff Infusion is simply selling its dwindling inventory of Chachimomma pants made to specifications under the exclusive licensing agreement as well as an entirely new brand of merchandise under the name rul9. Consumers who demand the original Chachimomma pants will not be confused by this arrangement. As soon as Infusion has sold off its remaining Chachimomma pants, only Guadalupe Gonzales and Chachimomma, Inc., will sell the original Chachimomma pants in the marketplace. Consumers who prefer the products offered by Infusion under the rul9 brand will be able to purchase those goods with the understanding that they are not purchasing Chachimomma pants. This strikes the Court as competition that will benefit the buying public.

III. Conclusion

For all of the reasons set forth in this opinion, the Court concludes that Guadalupe Gonzales and Chachimomma, Inc., have not demonstrated an entitlement to injunctive relief against Plaintiff Infusion. Accordingly, the Court must deny the motion of Guadalupe Gonzales and Chachimomma, Inc., for injunctive relief in the form of a temporary restraining order or a preliminary injunction. The Court shall leave final resolution of the amended counterclaims for another day.

IT IS SO ORDERED.

Dated: June 16, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge