NOTE: CHANGES MADE BY THE COURT

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MGA ENTERTAINMENT, INC., a California corporation,

Plaintiff,

vs.

LOUIS VUITTON MALLETIER, S.A., a French société anonyme; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:18-cv-10758-JFW(RAOx)

STATEMENT OF DECISION GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(1)

STATEMENT OF DECISION GRANTING MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(1)

On April 19, 2019, Defendant Louis Vuitton Malletier, S.A.S. ("Louis Vuitton") filed a Motion to Dismiss Plaintiff MGA Entertainment, Inc.'s ("MGA") First Amended Complaint in its entirety. On April 29, 2019, MGA filed its Opposition. On May 6, 2019, Louis Vuitton filed a Reply. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules that MGA failed to establish that an actual controversy exists between the parties. As a result, the Court hereby dismisses MGA's First Amended Complaint for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) without leave to amend.

I. BACKGROUND

On April 5, 2019, MGA filed a First Amended Complaint against Louis Vuitton seeking a declaratory judgment that MGA's toy product in no way violates Louis Vuitton's intellectual property rights. MGA is a California corporation that develops and distributes children's toys, including the "Bratz" dolls and a "handbag shaped toy container" referred to as "Pooey Puitton." (First Am. Compl. (Dkt. No. 35) ¶¶ 5, 10, 11, 13.) MGA alleges that on or around December 7, 2018, Louis Vuitton filed an action in a French court alleging that the Pooey Puitton name (the "Pooey Name") and product (the "Pooey Product") infringe upon and disparage certain E.U. trademarks owned by Louis Vuitton, and seeking orders from the court permitting the seizure of Pooey Products from E.U. businesses that had purchased them. (*Id.* ¶¶ 17, 19.) Louis Vuitton and MGA are now engaged in a lawsuit in France in which Louis Vuitton seeks relief in France for MGA's claimed violation of Louis Vuitton's E.U. trademark rights. (*Id.* ¶¶ 22–26.) In its action here, MGA claims that by filing an action in France alleging violation of its E.U. trademarks, Louis Vuitton has asserted claims against MGA and its customers in the United States related to U.S. trademarks, which MGA claims are "identical" to those asserted in the French proceedings. (*Id.* ¶ 30.)

The First Amended Complaint additionally alleges that there is an actual controversy between the parties because Louis Vuitton "has a history of not respecting parody rights" and "filing vexatious lawsuits" related to its trademarks. (*Id.* ¶ 60.) MGA refers to three such cases concerning unrelated companies and products. (*Id.* ¶¶ 61–62.) On this basis, MGA concludes that an "actual, present, and justiciable controversy has arisen between Plaintiff and Defendants concerning their respective rights." (*Id.* ¶ 69.)

MGA asks the Court to declare that: (a) MGA's use of the Pooey Name and the Pooey Product does not infringe or dilute Louis Vuitton's trademarks; (b) the Pooey Name and the Pooey Product are protected as fair use under 15 U.S.C. § 1125(c)(3)(A); (c) the Pooey Name and the Pooey Product are protected as parody under 15 U.S.C. § 1125(c)(3)(A)(ii); and (d) MGA may continue to market and distribute the Pooey Product and may continue to use the Pooey Name. (*Id.* at Prayer for Relief.)

Louis Vuitton now moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) on the grounds that MGA's First Amended Complaint fails to plead that an actual controversy exists under the laws of the United States sufficient to establish subject matter jurisdiction under the Declaratory Judgment Act ("DJA").

II. LEGAL STANDARD

Article III § 2 of the United States Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies" between parties. Therefore, the plaintiff must establish that an actual case or controversy exists before a federal court can exercise subject matter jurisdiction in any case. *See, e.g.*, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

The same rule applies where, as here, the plaintiff seeks a declaratory judgment. The DJA states, "[i]n a case of *actual controversy* within its jurisdiction . . . any court of the United States, upon the filing of an appropriate

pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis added). "[T]he phrase 'case of actual controversy' in the [DJA] refers to the type of 'Cases' and 'Controversies' that are justiciable under Article III." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

To meet the "actual controversy" standard of the DJA, as required to invoke the Court's jurisdiction, a plaintiff must allege facts showing that there is a dispute between the parties that is: "definite and concrete, touching the legal relations of parties having adverse legal interests; and that it be real and substantial and admit of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (internal quotation marks and citation omitted). [1]

The plaintiff bears the burden of establishing that the Court has jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). To invoke federal subject matter jurisdiction, a plaintiff "must allege facts, not mere legal conclusions" sufficient to establish grounds for the Court's jurisdiction. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction "may be facial or factual. In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (internal citation omitted). "The district court resolves a facial attack as it would a

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[1] In addition to an actual controversy, all declaratory judgment actions must have a source of federal jurisdiction independent of the DJA. *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671–74 (1950)). MGA alleges the Court has federal question jurisdiction under the Lanham Act. (*See* First Am. Compl. ¶ 2.)

motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite*, 749 F.3d at 1121. But "the Court is not required to accept mere conclusory allegations nor does the Court necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Cattie v. Wal-Mart Stores, Inc.*, 504 F. Supp. 2d 939, 943 (S.D. Cal. 2007).

Finally, where a motion to dismiss is granted, the Court must decide whether to grant leave to amend. While leave to amend should generally be freely granted, *DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992), a Court need not grant leave to amend in cases where "the pleadings before the court demonstrate that further amendment would be futile." *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987).

III. DISCUSSION

The allegations of MGA's First Amended Complaint fail to establish that an actual controversy exists under U.S. laws to establish jurisdiction under the DJA.

A. MGA's Assertion that a Claim about E.U. Rights is a Claim about U.S. Rights is Unsupported.

MGA argues that by filing an action in France concerning E.U. trademark registrations, Louis Vuitton has asserted claims against MGA in the United States concerning Louis Vuitton's U.S. trademark registrations. (First Am. Compl. ¶ 30.) The Court disagrees.

It is a fundamental tenet of trademark law that "a trademark has a separate legal existence in each country and receives the protection afforded by the laws of that country." *Am. Circuit Breaker Corp. v. Or. Breakers Inc.*, 406 F.3d 577, 582 (9th Cir. 2005) (internal citation omitted); *see also Person's Co., Ltd. v. Christman*, 900 F.2d 1565, 1568–69 (Fed. Cir. 1990). Because of the jurisdictionally bound nature of trademarks, a foreign court's determination

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